

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) MARCH 22, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 8
 DEFENDANT.)
) PAGES 985 - 1154

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
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SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
KELLY VOLKAR
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:
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CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 A P P E A R A N C E S: (CONT'D)

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28 UNITED STATES POSTAL INSPECTION SERVICE
29 BY: CHRISTOPHER MCCOLLOM

30 FEDERAL BUREAU OF INVESTIGATION
31 BY: MARIO C. SCUSSEL

32 UNITED STATES FOOD & DRUG
33 ADMINISTRATION
34 BY: GEORGE SCAVDIS

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SAN JOSE, CALIFORNIA

MARCH 22, 2022

P R O C E E D I N G S

(COURT CONVENED AT 8:49 A.M.)

(JURY OUT AT 8:49 A.M.)

THE COURT: THANK YOU. PLEASE BE SEATED. THANK YOU
FOR YOUR COURTESY.

LET'S GO ON THE RECORD IN 18-258, UNITED STATES VERSUS
RAMESH "SUNNY" BALWANI.

LET ME FIRST CAPTURE THE APPEARANCE OF THE PARTIES,
PLEASE.

FOR THE GOVERNMENT.

MR. BOSTIC: GOOD MORNING, YOUR HONOR.

JOHN BOSTIC FOR THE UNITED STATES, JOINED BY JEFF SCHENK,
BOB LEACH, AND KELLY VOLKAR.

THE COURT: THANK YOU. GOOD MORNING.

AND FOR THE DEFENSE.

MR. COOPERSMITH: GOOD MORNING, YOUR HONOR.

JEFF COOPERSMITH FOR MR. BALWANI, WHO IS PRESENT.

THE COURT: GOOD MORNING.

MR. COOPERSMITH: I'M JOINED BY MY COLLEAGUES:
AMY WALSH, STEPHEN CAZARES, AND THEN OTHER COLLEAGUES WHO ARE
SITTING IN THE BACK ROW.

THE COURT: THANK YOU. GOOD MORNING. GOOD MORNING.
WE ARE ON THE RECORD OUTSIDE OF THE PRESENCE OF THE JURY,
AND I WANTED TO TAKE UP DOCUMENT 1367, WHICH WAS THE DEFENSE

08:50AM 1 MOTION TO EXCLUDE TRIAL EXHIBIT 2931. THIS WAS FILED, I THINK,
08:50AM 2 YESTERDAY AFTERNOON. I'VE LOOKED AT THAT AND THE EXHIBIT
08:50AM 3 ATTACHED.

08:50AM 4 I THOUGHT WE WOULD HAVE DISCUSSION ABOUT THIS THIS MORNING
08:50AM 5 BEFORE WE BROUGHT OUR JURY IN.

08:50AM 6 MR. COOPERSMITH.

08:50AM 7 MR. COOPERSMITH: YES, YOUR HONOR. WE FILED OUR
08:50AM 8 PAPER LAST NIGHT JUST TO MAKE SURE WE LAID OUT OUR ARGUMENT. I
08:50AM 9 WON'T REPEAT THAT.

08:50AM 10 THE EXHIBIT IN QUESTION, EXHIBIT 2931, IS HEARSAY.

08:50AM 11 IF YOU GO BACK TO THE TRANSCRIPT OF MS. HOLMES'S CASE,
08:50AM 12 THIS SAME EXHIBIT CAME UP AND WHAT ENDED UP HAPPENING IS THAT
08:50AM 13 THE GOVERNMENT DID NOT ARTICULATE ANY HEARSAY EXCEPTION, AND
08:51AM 14 THERE IS NO HEARSAY EXCEPTION THAT WE CAN SEE.

08:51AM 15 AND THEN THE GOVERNMENT ARGUED THAT MAYBE IT WAS RELEVANT
08:51AM 16 TO SHOW, YOU KNOW, WHY CMS TOOK THE ACTION THAT IT TOOK. AND
08:51AM 17 THE COURT, IN FAIRNESS, IN THE TRANSCRIPT WAS SKEPTICAL OF THAT
08:51AM 18 POSITION AND QUESTIONED WHY THE EMAIL WOULD BE NECESSARY FOR
08:51AM 19 THAT.

08:51AM 20 AS WE'VE SAID IN OUR MOTION PAPER, THE CMS WITNESS, IF
08:51AM 21 THEY TESTIFY, OR MS. CHEUNG COULD SIMPLY SAY I FILED A
08:51AM 22 COMPLAINT, AND SHE COULD DESCRIBE -- SHE DOESN'T HAVE ANY
08:51AM 23 FAILURE OF MEMORY. SHE'S TESTIFIED ABOUT THIS A NUMBER OF
08:51AM 24 TIMES. SHE CAN RECOUNT WHAT SHE CLAIMED SHE OBSERVED.

08:51AM 25 BUT THE DOCUMENT IS HEARSAY AND SHOULD NOT BE ADMITTED.

08:51AM 1 IT'S NOT RELEVANT FOR ANY PURPOSE.

08:51AM 2 I WOULD ALSO JUST NOTE THAT I THINK AS THE COURT KNOWS
08:51AM 3 FROM THE PREVIOUS TRIAL, AND I THINK WE'LL HEAR IN THIS TRIAL,
08:51AM 4 CMS WAS SCHEDULED TO DO THIS INSPECTION IN SEPTEMBER OF 2015
08:51AM 5 REGARDLESS OF WHETHER MS. CHEUNG HAD FILED HER COMPLAINT OR
08:52AM 6 NOT. SHE ACTUALLY SENT THE LETTER IN SEPTEMBER.

08:52AM 7 SO WE DON'T EVEN THINK IT ACTUALLY INFORMS ANYTHING OTHER
08:52AM 8 THAN TRYING TO BOLSTER MS. CHEUNG OR GIVE MORE CREDENCE TO WHAT
08:52AM 9 SHE'S SAYING BY HAVING A WRITTEN DOCUMENT.

08:52AM 10 I CAN CERTAINLY ANSWER QUESTIONS, BUT I DON'T THINK
08:52AM 11 THERE'S ANY HEARSAY EXCEPTION, AND I DON'T THINK IT'S
08:52AM 12 ADMISSIBLE FOR ANY NONHEARSAY PURPOSE AS WE HAVE SAID IN OUR
08:52AM 13 MOTION PAPER.

08:52AM 14 THE COURT: ALL RIGHT. THANK YOU.

08:52AM 15 MR. BOSTIC.

08:52AM 16 MR. BOSTIC: THANK YOU, YOUR HONOR.

08:52AM 17 SO I THINK JUST AS AN INITIAL PROCEDURAL MATTER JUST
08:52AM 18 ADDRESSING THE TIMING OF THE MOTION, FOR THE RECORD, WE DID
08:52AM 19 DISCLOSE THE EXHIBITS THAT WE INTENDED TO USE WITH THIS WITNESS
08:52AM 20 A WEEK AGO, LAST TUESDAY.

08:52AM 21 IN THE INTERVENING TIME I'M NOT AWARE OF ANY ATTEMPT BY
08:52AM 22 THE DEFENSE TO MEET AND CONFER ON THIS ISSUE, AND THE TIMING OF
08:52AM 23 THE MOTION, THE TIMING OF THE FILING EFFECTIVELY PREVENTED THE
08:52AM 24 GOVERNMENT FROM FILING A WRITTEN RESPONSE.

08:52AM 25 THAT SAID, I THINK WE CAN EXPRESS OUR VIEWS VERBALLY

08:53AM 1 TODAY.

08:53AM 2 THIS DOCUMENT IS NOT BEING OFFERED FOR THE TRUTH OF THE
08:53AM 3 MATTER.

08:53AM 4 MY RECOLLECTION IS THAT IN THE PREVIOUS TRIAL THIS
08:53AM 5 DOCUMENT WAS NOT EXCLUDED BUT THE GOVERNMENT ELECTED NOT TO
08:53AM 6 ATTEMPT TO OFFER PARTLY IN LIGHT OF THE DISCUSSION THAT THE
08:53AM 7 PARTIES HAD WITH THE COURT.

08:53AM 8 I THINK, THOUGH, THAT THE DOCUMENT IS ADMISSIBLE FOR THE
08:53AM 9 NONHEARSAY PURPOSE OF SHOWING WHAT MS. CHEUNG COMMUNICATED TO
08:53AM 10 REGULATORS ABOUT THERANOS AND WHEN, AND ALSO FOR THE PURPOSE OF
08:53AM 11 INFORMING THE JURY AS TO WHY CMS TOOK CERTAIN ACTIONS LATER.

08:53AM 12 AND ON THAT POINT, I THINK THE FACT THAT THE CMS
08:53AM 13 INSPECTION WAS SCHEDULED BEFORE THE RECEIPT OF THIS EMAIL DOES
08:53AM 14 NOT MEAN THAT IT'S NOT RELEVANT TO CMS'S DECISIONS AND THE
08:53AM 15 ACTIONS THAT THEY TOOK SUBSEQUENTLY. THERE'S NO REQUIREMENT
08:53AM 16 THAT AN EVENT NEED BE A BUT FOR CAUSE SUBSEQUENT EVENT TO IN
08:54AM 17 ORDER TO BE RELEVANT TO SHOW THAT CAUSATION.

08:54AM 18 SO I THINK THAT A CMS WITNESS WOULD STILL TESTIFY THAT
08:54AM 19 THIS DOCUMENT, THIS REPORT WAS RELEVANT TO THE AGENCY'S PROCESS
08:54AM 20 AND CONSIDERATION OF THE ISSUES AT THERANOS, SO I THINK IT'S
08:54AM 21 RELEVANT FOR THAT PURPOSE.

08:54AM 22 I ALSO DON'T HEAR THE DEFENSE OBJECTING TO MS. CHEUNG
08:54AM 23 TESTIFYING ABOUT WHAT SHE OBSERVED AT THERANOS, THAT IS, THE
08:54AM 24 CONTENT OF THIS EXHIBIT IN QUESTION, AND I DON'T HEAR THE
08:54AM 25 DEFENSE OBJECTING TO MS. CHEUNG TESTIFYING THAT SHE INFORMED

08:54AM 1 CMS OF THESE SPECIFIC ISSUES. SO WE HAVE -- IT SEEMS THAT IT'S
08:54AM 2 NOT CONTROVERSIAL THAT MS. CHEUNG CAN TESTIFY ABOUT THE
08:54AM 3 PROBLEMS THAT SHE SAW AND THE FACT THAT SHE REPORTED THOSE
08:54AM 4 PROBLEMS TO CMS.

08:54AM 5 IT'S UNCLEAR TO ME WHY THE DOCUMENT ITSELF, BY WHICH SHE
08:54AM 6 ACCOMPLISHED THAT REPORTING, CAN'T COME IN. WITHOUT THAT
08:54AM 7 DOCUMENT, WE'RE LEFT ONLY WITH MS. CHEUNG SAYING, AND, YES,
08:55AM 8 SUBSEQUENTLY I REPORTED THESE ISSUES TO THE GOVERNMENT. IT'S
08:55AM 9 BENEFICIAL TO THE JURY TO ACTUALLY SEE THE FORM THAT THAT
08:55AM 10 REPORTING TOOK.

08:55AM 11 I HEAR THE DEFENSE OBJECTING TO CERTAIN LANGUAGE IN THE
08:55AM 12 EXHIBIT, BUT I THINK THAT CAN BE ADDRESSED, IF NECESSARY IF THE
08:55AM 13 COURT AGREES WITH THOSE 403 CONCERNS, WITH SOME NARROW
08:55AM 14 REDACTIONS TO THE DOCUMENT, AND I THINK OVERALL THE DOCUMENT
08:55AM 15 SHOULD BE ADMITTED.

08:55AM 16 THE COURT: ALL RIGHT. THANK YOU.

08:55AM 17 IS THAT ACCURATE, MR. COOPERSMITH, THAT THE DEFENSE DOES
08:55AM 18 NOT OBJECT TO -- LET ME TAKE THIS OFF -- THAT THE DEFENSE DOES
08:55AM 19 NOT OBJECT TO MS. CHEUNG TESTIFYING ABOUT HER PERSONAL
08:55AM 20 OBSERVATIONS AND THE FACT THAT SHE DID MAKE A COMPLAINT OR
08:55AM 21 CONTACT THE CMS? YOU HAVE NO OBJECTION TO THAT?

08:55AM 22 MR. COOPERSMITH: RIGHT, YOUR HONOR. WE SAID THAT
08:55AM 23 IN THE MOTION PAPER.

08:55AM 24 THE COURT: RIGHT.

08:55AM 25 MR. COOPERSMITH: WITHIN THE BOUNDS OF OTHER RULES

08:55AM 1 OF EVIDENCE, SHE CAN TESTIFY ABOUT WHAT SHE CLAIMS TO HAVE
08:55AM 2 OBSERVED AT THERANOS.

08:55AM 3 SHE CAN TESTIFY THAT SHE MADE A COMPLAINT TO CMS.

08:55AM 4 AND WHAT IS GOING TO BE AN ISSUE IN THE TRIAL IS WHETHER
08:56AM 5 THE SUBSTANCE OF WHAT SHE CLAIMS SHE OBSERVED IS CORRECT,
08:56AM 6 INCORRECT, OR SOMETHING IN BETWEEN.

08:56AM 7 THE COURT: SURE.

08:56AM 8 MR. COOPERSMITH: BUT THE DOCUMENT IS HEARSAY. IT'S
08:56AM 9 JUST THE SORT OF PREPARED STATEMENT THAT IS, YOU KNOW,
08:56AM 10 ROUTINELY EXCLUDED IN EVIDENCE.

08:56AM 11 AND THIS IDEA THAT WE MUST HAVE THIS EMAIL IN TO INFORM
08:56AM 12 WHAT CMS DID, I JUST DON'T THINK THAT THAT HOLDS WATER.

08:56AM 13 THE COURT: WELL, IT WOULD. IT WOULD IF A WITNESS
08:56AM 14 TESTIFIES I SAW THIS, MY REACTION TO THAT WAS THIS BASED ON MY
08:56AM 15 PERSONAL OBSERVATION, TRAINING," WHATEVER THAT TESTIMONY IS,
08:56AM 16 AND THEN I CONTACTED X.

08:56AM 17 HOW DID YOU DO THAT?

08:56AM 18 WELL, I EMAILED. OKAY. THAT'S WHAT A WITNESS WOULD SAY
08:56AM 19 THEY DO.

08:56AM 20 CAN'T A PARTY THEN SHOW, PERHAPS THE HEADER, IS THIS THE
08:56AM 21 HEADER OF THE EMAIL THAT YOU SENT? IS THIS THE DATE AND TIME
08:56AM 22 THAT YOU SENT THE EMAIL?

08:56AM 23 SHOULD THE JURY BE SHOWN AT LEAST THE HEADER WHICH WOULD
08:56AM 24 HAVE THE DATE AND TIME AND THE ADDRESS OF AN EMAIL? AT A
08:57AM 25 MINIMUM -- THAT'S SOMETHING YOU WOULD LIKE TO SHOW AT A MINIMUM

08:57AM 1 I GUESS, MR. BOSTIC.

08:57AM 2 MR. BOSTIC: THAT WOULD BE BETTER THAN NOTHING,
08:57AM 3 YOUR HONOR. I THINK THE SUBSTANCE OF THE EMAIL IS ALSO
08:57AM 4 IMPORTANT --

08:57AM 5 THE COURT: SURE.

08:57AM 6 MR. BOSTIC: -- TO SHOW THE DETAIL WITH WHICH
08:57AM 7 MS. CHEUNG REPORTED THESE ISSUES.

08:57AM 8 IT'S ALSO PROBATIVE OF THE -- HER IMPRESSION OF THE ISSUES
08:57AM 9 AND THE LEVEL OF SERIOUSNESS THAT SHE ASSIGNS TO THEM AT THE
08:57AM 10 TIME AND SUBSEQUENTLY WHEN SHE WAS MAKING THE REPORT.

08:57AM 11 THE COURT: SO THERE'S SOME LANGUAGE IN THE DOCUMENT
08:57AM 12 THAT I'VE LOOKED AT, THAT PERSONAL OPINION, ET CETERA, THAT
08:57AM 13 MIGHT BE OBJECTIONABLE FOR 403 AND OTHER REASONS.

08:57AM 14 BUT, MR. COOPERSMITH, WHAT --

08:57AM 15 MR. COOPERSMITH: SO ON THE ISSUE OF THE HEADER OF
08:57AM 16 THE EMAIL, I SUPPOSE IF MS. CHEUNG WERE TO TESTIFY THAT SHE
08:58AM 17 CAN'T REMEMBER THE DATE, AND THAT'S SOMEHOW IMPORTANT TO THE
08:58AM 18 GOVERNMENT, THEY CAN CERTAINLY REFRESH HER MEMORY WITH ANYTHING
08:58AM 19 THEY WANT, BUT THAT DOESN'T MEAN THAT THE HEADER OR THE EMAIL
08:58AM 20 HAS TO COME INTO EVIDENCE.

08:58AM 21 I JUST DON'T THINK MS. CHEUNG'S CRAFTED -- YOU KNOW, WHAT
08:58AM 22 HAPPENS, RIGHT, IS THAT SHE WAITS 17 MONTHS AFTER SHE LEAVES
08:58AM 23 THERANOS, SHE THEN TALKS TO A JOURNALIST, SHE THEN DECIDES TO
08:58AM 24 WRITE AN EMAIL, AND IT'S A CRAFTED EMAIL, AND IT'S EXACTLY THE
08:58AM 25 TYPE OF THING THAT IS ROUTINELY EXCLUDED.

08:58AM 1 BUT WHAT THE GOVERNMENT IS TRYING TO DO, YOUR HONOR, I
08:58AM 2 THINK PRETTY OBVIOUSLY, IS TRYING TO GIVE MORE CREDIBILITY OR
08:58AM 3 CREDENCE TO WHAT MS. HOLMES -- RATHER TO WHAT MS. CHEUNG,
08:58AM 4 MS. CHEUNG IS SAYING BY PUTTING IN THIS DOCUMENT, WHICH IS
08:58AM 5 REALLY JUST HER CRAFTED STATEMENT OF WHAT SHE'S GOING TO
08:58AM 6 TESTIFY ABOUT.

08:58AM 7 SO SHE CAN TESTIFY ABOUT WHAT SHE CLAIMS TO HAVE OBSERVED.
08:58AM 8 SHE CAN TESTIFY THAT SHE FILED A COMPLAINT. IF SHE NEEDS TO
08:58AM 9 REFRESH HER MEMORY ABOUT THE DATE, THE GOVERNMENT CAN DO THAT
08:58AM 10 IF THEY WISH, BUT THE EMAIL ITSELF I THINK IS A FORM OF
08:58AM 11 BOLSTERING, FRANKLY, TO TRY TO GIVE MORE CREDIBILITY TO
08:59AM 12 MS. CHEUNG AND MORE WEIGHT TO WHAT SHE'S SAYING BY INTRODUCING
08:59AM 13 AN OUT-OF-COURT STATEMENT.

08:59AM 14 I DON'T THINK THERE'S ANY PURPOSE THAT IS -- OTHER THAN
08:59AM 15 TRYING TO SHOW THE TRUTH OF THESE COMPLAINTS, BECAUSE IT MUST
08:59AM 16 BE TRUE IF MS. CHEUNG TOOK THE, YOU KNOW, THE TIME TO GO TO CMS
08:59AM 17 WITH A WRITTEN COMPLAINT, AND I DON'T THINK THAT'S ADMISSIBLE.

08:59AM 18 I THINK THE OTHER PURPOSES THAT THE GOVERNMENT ARTICULATES
08:59AM 19 COULD BE ACCOMPLISHED WITHOUT THE GOVERNMENT. THAT'S WHAT THE
08:59AM 20 COURT SUGGESTED AT THE LAST HEARING.

08:59AM 21 AS I SAID, THE GOVERNMENT ABANDONED ANY EFFORT TO
08:59AM 22 INTRODUCE THE DOCUMENT, AND NOW WE SEE IT'S RESURRECTED, BUT I
08:59AM 23 THINK IT'S STILL INADMISSIBLE.

08:59AM 24 THE COURT: ALL RIGHT. THANK YOU.

08:59AM 25 MR. BOSTIC: SO, YOUR HONOR, NECESSITY IS NOT A

08:59AM 1 REQUIREMENT TO ADMISSIBILITY. THERE'S NO REQUIREMENT THAT THE
08:59AM 2 GOVERNMENT NEED TO INTRODUCE A DOCUMENT IN ORDER FOR IT TO BE
08:59AM 3 ADMISSIBLE.

08:59AM 4 IN THIS CASE, I THINK IT'S ROUTINE THAT WHEN A WITNESS IS
08:59AM 5 TESTIFYING THAT A CERTAIN EVENT HAPPENED OR A CERTAIN
08:59AM 6 COMMUNICATION TOOK PLACE, AND THERE IS DOCUMENTARY EVIDENCE OF
09:00AM 7 THAT EVENT OR THAT COMMUNICATION, IT IS ROUTINE FOR THAT PIECE
09:00AM 8 OF EVIDENCE TO BE ADMITTED AND PUBLISHED TO THE JURY. THAT'S
09:00AM 9 PART OF HOW EVIDENCE IS INTRODUCED.

09:00AM 10 SO THIS IS NOT AN EXCEPTION TO THAT. THE GOVERNMENT IS
09:00AM 11 SIMPLY SEEKING TO DO THE SAME THING HERE.

09:00AM 12 THIS IS ALSO DIFFERENT FROM MOST, IF NOT ALL, OF THE CASES
09:00AM 13 CITED IN THE DEFENSE BRIEF IN THAT THIS DOESN'T RELATE TO AN
09:00AM 14 OUT-OF-COURT STATEMENT BY A WITNESS WHO IS NOT ON THE STAND,
09:00AM 15 SOMETHING THAT IS INCONSISTENT WITH IN-COURT PRESENTATION.

09:00AM 16 HERE THE WITNESS IS GOING TO TESTIFY ABOUT THE PROBLEMS
09:00AM 17 AND THE ISSUES THAT SHE SAW AT THERANOS. THAT TESTIMONY WILL
09:00AM 18 BE CONSISTENT WITH THE POINTS IN THIS DOCUMENT.

09:00AM 19 AND THAT DOESN'T MAKE THE DOCUMENT CUMULATIVE OR
09:00AM 20 UNNECESSARY. IT SHOWS THAT THIS DOCUMENT IS NOT BEING
09:00AM 21 INTRODUCED FOR THE TRUTH OF THE MATTER ASSERTED.

09:00AM 22 THE TRUTH OF THOSE POINTS WILL BE ESTABLISHED BY THE
09:00AM 23 TESTIMONY ITSELF, BUT THERE'S NO REASON THAT THE DOCUMENT CAN'T
09:00AM 24 BE ADMISSIBLE TO SHOW THAT THESE VERY POINTS WERE COMMUNICATED
09:01AM 25 TO REGULATORS IN THE SPECIFIC FORM AT THIS TIME.

09:01AM 1 THE COURT: ALL RIGHT. THANK YOU.

09:01AM 2 ANYTHING FURTHER?

09:01AM 3 MR. COOPERSMITH: JUST THAT THAT ARGUMENT THAT
09:01AM 4 MR. BOSTIC JUST MADE IS A CIRCULAR ARGUMENT, RIGHT?

09:01AM 5 BY THAT -- THOSE LIKES, ANY DOCUMENT THAT IS HEARSAY ANY
09:01AM 6 DOCUMENT CAN BE ADMITTED BECAUSE IT SOMEHOW SHOWS WHAT THE
09:01AM 7 EFFECT ON THE LISTENER WOULD BE WHO IS NOT EVEN THE DEFENDANT.

09:01AM 8 SO, AGAIN, UNDER THE HEARSAY RULES AND ALSO 403, WHICH I
09:01AM 9 SHOULD MENTION, WHATEVER PROBATIVE VALUE THAT IT HAS, WHICH I
09:01AM 10 THINK IS LOW OR NONE, WOULD BE OUTWEIGHED BY THE DANGER THAT
09:01AM 11 THE JURY PUTS MORE WEIGHT ON THIS JUST BECAUSE SHE PREPARED A
09:01AM 12 WRITTEN COMPLAINT TO CMS.

09:01AM 13 AS I SAID, WE'RE NOT TRYING TO PRECLUDE THE GOVERNMENT
09:01AM 14 FROM HAVING MS. CHEUNG TESTIFY ABOUT WHAT SHE CLAIMED TO HAVE
09:01AM 15 OBSERVED WITHIN THE BOUNDS OF THE EVIDENCE RULES.

09:01AM 16 THE COURT: ALL RIGHT.

09:01AM 17 MR. COOPERSMITH: THAT'S IT.

09:01AM 18 THE COURT: THANK YOU VERY MUCH.

09:01AM 19 ALL RIGHT. WELL, THANK YOU.

09:01AM 20 I'VE LOOKED AT THE DOCUMENT, AT THE EXHIBIT, AND YOU'VE
09:01AM 21 SEEN THE EXHIBIT, MR. BOSTIC.

09:01AM 22 DOES THAT REPRESENT WHAT THE GOVERNMENT WOULD SEEK TO
09:02AM 23 INTRODUCE?

09:02AM 24 MR. BOSTIC: YES, YOUR HONOR.

09:02AM 25 THE COURT: ALL RIGHT. THANK YOU.

09:02AM 1 I DO SEE SOME PROBLEMS WITH INTRODUCING THE TOTALITY OF
09:02AM 2 THE DOCUMENT FOR 403 AND OTHER REASONS. I DO THINK THAT THE
09:02AM 3 WITNESS CAN TESTIFY OBVIOUSLY ABOUT WHAT SHE DID, WHAT SHE
09:02AM 4 OBSERVED, WHAT SHE DID, WHY SHE FELT IT NECESSARY TO DO WHAT
09:02AM 5 SHE DID AND OFFER ALL OF THOSE EXPLANATIONS ON DIRECT
09:02AM 6 EXAMINATION.

09:02AM 7 THE DOCUMENT CAN BE USED TO REFRESH HER RECOLLECTION,
09:02AM 8 ET CETERA.

09:02AM 9 I DO THINK THAT THE HEADER, AT A MINIMUM, THE HEADER COULD
09:02AM 10 BE PUBLISHED TO THE JURY TO SHOW THE JURY, TO AUTHENTICATE THAT
09:02AM 11 SHE DID INDEED SEND AN EMAIL AS SHE SAID SHE DID.

09:02AM 12 THE CONTENT OF IT IS WHAT, MR. COOPERSMITH -- WELL, YOU
09:02AM 13 PROBABLY DON'T WANT THE HEADER, EITHER -- BUT THE CONTENT IS
09:02AM 14 REALLY WHAT YOU TAKE A POSITION AGAINST, THAT IS, THE CONTENT
09:02AM 15 OF THE EMAIL ITSELF.

09:02AM 16 AND WITHOUT ANY FURTHER -- AND AGAIN, THIS POINTS TO THE
09:03AM 17 MOTION WAS FILED LATE YESTERDAY AFTERNOON, ACTUALLY AFTER WE
09:03AM 18 MET, I THINK, AND YOU HAVEN'T HAD A CHANCE TO PARSE THROUGH.

09:03AM 19 IF THE GOVERNMENT SOUGHT TO OFFER A REDACTION OF SOME
09:03AM 20 PORTION, I'D LOOK AT THAT, BUT AS IT PRESENTS NOW IN TOTALITY,
09:03AM 21 I'M NOT GOING TO ALLOW IT TO BE ADMITTED.

09:03AM 22 I DO THINK THAT THERE ARE SOME HEARSAY ISSUES. THERE ARE
09:03AM 23 ALSO 403 ISSUES IN THIS.

09:03AM 24 IT DOES EXPRESS PERSONAL OPINIONS THAT COULD PERHAPS LOOK
09:03AM 25 AT ANIMUS TOWARDS CERTAIN THINGS THAT ARE NOT RELEVANT. SO

09:03AM 1 WITHOUT THAT BEING OFFERED AS REDACTIONS, I'M GOING TO
09:03AM 2 RESPECTFULLY DECLINE YOUR REQUEST TO INTRODUCE THIS AS IT IS.

09:03AM 3 I WILL ALLOW THE HEADER, THOUGH, WITH THE DATE AND TIME,
09:03AM 4 IF THAT'S AUTHENTICATED, THAT IS, THE DATE SHE SENT AN EMAIL,
09:03AM 5 THE ADDRESSEE, TO WHOM SHE SENT IT, THE DATE AND TIME. I THINK
09:03AM 6 THAT IS A NEUTRAL -- SHE'S GOING TO TESTIFY ABOUT THAT, AND
09:04AM 7 THAT IS CERTAINLY NEUTRAL AND WOULD AUTHENTICATE ANY MAILING
09:04AM 8 THAT SHE DID.

09:04AM 9 ALL RIGHT.

09:04AM 10 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:04AM 11 THE COURT: ANYTHING FURTHER ON THIS?

09:04AM 12 MR. BOSTIC: NO, YOUR HONOR. THANK YOU.

09:04AM 13 THE COURT: THANK YOU.

09:04AM 14 I DO WANT TO TALK ABOUT -- WHAT WE'RE GOING TO DO IS WE'LL
09:04AM 15 INVITE OUR JURY IN IN JUST A MOMENT, AND I'LL PRELIMINARILY
09:04AM 16 INSTRUCT THEM, AND THEN WE WILL SEE IF YOU HAVE ANY OPENING
09:04AM 17 STATEMENTS TO BEGIN WITH.

09:04AM 18 ON DOCUMENT 1350, WHICH WAS THE STIPULATED PRELIMINARY
09:04AM 19 INSTRUCTIONS OF THE PARTIES, THERE WAS A FOOTNOTE 1, AND I
09:04AM 20 BELIEVE THE DEFENSE ASKED THAT I ADD TO THE MODEL INSTRUCTION
09:04AM 21 1.6 ON "RULING ON OBJECTIONS" AN EXTRA PARAGRAPH REGARDING
09:04AM 22 OBJECTIONS AND SIGNIFICANCE OF THOSE.

09:04AM 23 ANYTHING FURTHER ON THAT, MR. COOPERSMITH, ON YOUR
09:04AM 24 REQUEST?

09:04AM 25 MR. COOPERSMITH: NO. OTHER THAN WE REQUESTED THE,

09:04AM 1 THE FOOTNOTE TO BE READ AND THAT'S OUR POSITION.

09:04AM 2 THE COURT: OKAY. ANYTHING?

09:05AM 3 MR. LEACH: NO, YOUR HONOR.

09:05AM 4 THE COURT: ALL RIGHT. THANK YOU.

09:05AM 5 I'M NOT GOING TO READ THAT FOOTNOTE. I DO BELIEVE THAT

09:05AM 6 THAT 1.6, MODEL INSTRUCTION 1.6 WHICH IS TITLED "RULING ON

09:05AM 7 OBJECTIONS," CAPTURES THE SENTIMENT OF WHAT YOU HAVE ASKED TO

09:05AM 8 INTRODUCE.

09:05AM 9 I DON'T THINK IT'S NECESSARY TO INTRODUCE YET ANOTHER

09:05AM 10 SENTENCE TO CAPTURE THE SENTIMENT OF THE INSTRUCTION. SO I'M

09:05AM 11 GOING TO DECLINE YOUR INVITATION TO READ THAT. THE MODEL

09:05AM 12 INSTRUCTIONS FULFILL THAT TASK APPROPRIATELY FOR THE JURY.

09:05AM 13 I'LL STEP DOWN NOW.

09:05AM 14 ANYTHING FURTHER BEFORE WE BREAK? AND WE'LL HAVE OUR JURY

09:05AM 15 COME IN IN JUST A MOMENT?

09:05AM 16 MR. BOSTIC: NO, YOUR HONOR. THANK YOU.

09:05AM 17 MR. COOPERSMITH: NO, YOUR HONOR.

09:05AM 18 THE COURT: OKAY. THANK YOU.

09:05AM 19 (RECESS FROM 9:05 A.M. UNTIL 9:20 A.M.)

09:20AM 20 (JURY IN AT 9:20 A.M.)

09:20AM 21 THE COURT: LET'S GO ON THE RECORD IN 18-258,

09:20AM 22 UNITED STATES VERSUS RAMESH "SUNNY" BALWANI.

09:20AM 23 ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

09:20AM 24 OUR JURY AND ALTERNATES ARE PRESENT.

09:21AM 25 GOOD MORNING, LADIES AND GENTLEMEN. IT'S NICE TO SEE YOU

09:21AM 1 AGAIN. THANK YOU FOR COMING BACK. WE APPRECIATE YOUR
09:21AM 2 PATIENCE.

09:21AM 3 WHAT IS GOING TO HAPPEN TODAY, LADIES AND GENTLEMEN, IS IN
09:21AM 4 JUST A MOMENT I'M GOING TO READ YOU SOME PRELIMINARY
09:21AM 5 INSTRUCTIONS THAT I HOPE WILL GUIDE YOU AS WE START THE TRIAL
09:21AM 6 TODAY.

09:21AM 7 I'LL THEN TURN TO THE PARTIES TO SEE IF THEY HAVE ANY
09:21AM 8 OPENING STATEMENTS THAT THEY WISH TO PRESENT TO YOU.

09:21AM 9 FOLLOWING THAT, WE'LL CALL THE FIRST WITNESS AND BEGIN
09:21AM 10 EVIDENCE IN THE TRIAL.

09:21AM 11 BEFORE WE DO THAT, THOUGH, PLEASE REMEMBER WHEN WE WERE
09:21AM 12 LAST TOGETHER, I TOLD YOU I WOULD ASK YOU A QUESTION THAT I
09:21AM 13 WILL ASK YOU EVERY TIME WE START OUR SESSION, AND THAT QUESTION
09:21AM 14 REGARDS THE ADMONITION THAT I GAVE YOU WHEN WE LAST PARTED
09:21AM 15 COMPANY, WHICH WAS TO NOT DO ANY RESEARCH, COME UPON ANYTHING
09:22AM 16 TO DO WITH THIS CASE, DO NOT DISCUSS THE CASE IN ANY WAY.

09:22AM 17 SO NOW LET ME ASK ALL OF YOU, HAVE ANY OF YOU, SINCE THE
09:22AM 18 LAST TIME THAT WE WERE TOGETHER, HAVE ANY OF YOU HEARD,
09:22AM 19 LISTENED TO, SAW, READ, DISCUSSED, OR IN ANY WAY, HAD ANY
09:22AM 20 ATTENTION COME TO YOU REGARDING ANYTHING TO DO WITH THIS CASE?

09:22AM 21 IF SO, IF YOU WOULD PLEASE RAISE YOUR HAND.

09:22AM 22 I SEE NO HANDS.

09:22AM 23 THANK YOU VERY MUCH. THANK YOU FOR YOUR FIDELITY TO MY
09:22AM 24 ADMONITION. I'LL GIVE YOU THAT EVERY DAY WHEN WE BREAK, AND
09:22AM 25 WHEN WE MEET AGAIN EVERY MORNING OR AFTERNOON I'LL ASK YOU THAT

09:22AM 1 SAME QUESTION. SO I APPRECIATE YOUR ATTENTION TO THAT.

09:22AM 2 LADIES AND GENTLEMEN, YOU ARE NOW THE JURY IN THIS CASE,
09:23AM 3 AND I WANT TO TAKE A FEW MINUTES TO TELL YOU SOMETHING ABOUT
09:23AM 4 YOUR DUTIES AS JURORS AND TO GIVE YOU SOME PRELIMINARY
09:23AM 5 INSTRUCTIONS.

09:23AM 6 AT THE END OF THE TRIAL, I WILL GIVE YOU MORE DETAILED
09:23AM 7 WRITTEN INSTRUCTIONS THAT WILL CONTROL YOUR DELIBERATIONS.

09:23AM 8 WHEN YOU DELIBERATE, IT WILL BE YOUR DUTY TO WEIGH AND TO
09:23AM 9 EVALUATE ALL OF THE EVIDENCE RECEIVED IN THE CASE, AND IN THAT
09:23AM 10 PROCESS TO DECIDE THE FACTS.

09:23AM 11 TO THE FACTS AS YOU FIND THEM, YOU WILL APPLY THE LAW AS I
09:23AM 12 GIVE IT TO YOU, WHETHER YOU AGREE WITH THE LAW OR NOT. YOU
09:23AM 13 MUST DECIDE THE CASE SOLELY ON THE EVIDENCE AND THE LAW BEFORE
09:23AM 14 YOU.

09:23AM 15 PERFORM THESE DUTIES FAIRLY AND IMPARTIALLY. YOU SHOULD
09:23AM 16 NOT BE INFLUENCED BY ANY PERSON'S RACE, COLOR, RELIGIOUS
09:23AM 17 BELIEFS, NATIONAL ANCESTRY, SEXUAL ORIENTATION, GENDER
09:24AM 18 IDENTITY, GENDER, OR PROFESSION, CELEBRITY, ECONOMIC
09:24AM 19 CIRCUMSTANCES, OR POSITION IN LIFE OR IN THE COMMUNITY.

09:24AM 20 ALSO, DO NOT ALLOW YOURSELF TO BE INFLUENCED BY PERSONAL
09:24AM 21 LIKES OR DISLIKES, SYMPATHY, PREJUDICE, FEAR, PUBLIC OPINION,
09:24AM 22 OR BIASES, INCLUDING UNCONSCIOUS BIASES.

09:24AM 23 UNCONSCIOUS BIASES ARE STEREOTYPES, ATTITUDES, OR
09:24AM 24 PREFERENCES THAT PEOPLE MAY CONSCIOUSLY REJECT BUT MAY BE
09:24AM 25 EXPRESSED WITHOUT CONSCIOUS AWARENESS, CONTROL, OR INTENTION.

09:24AM 1 LIKE CONSCIOUS BIAS, UNCONSCIOUS BIAS CAN AFFECT HOW WE
09:24AM 2 EVALUATE INFORMATION AND MAKE DECISIONS.

09:24AM 3 THIS IS A CRIMINAL CASE BROUGHT BY THE UNITED STATES
09:24AM 4 GOVERNMENT. THE GOVERNMENT CHARGES MR. BALWANI WITH CONSPIRACY
09:25AM 5 TO COMMIT WIRE FRAUD AGAINST THERANOS INVESTORS, CONSPIRACY TO
09:25AM 6 COMMIT WIRE FRAUD AGAINST THERANOS PAYING PATIENTS, AND WIRE
09:25AM 7 FRAUD AGAINST THERANOS INVESTORS AND PAYING PATIENTS.

09:25AM 8 THE CHARGES AGAINST MR. BALWANI ARE CONTAINED IN THE
09:25AM 9 INDICTMENT. THE INDICTMENT SIMPLY DESCRIBES THE CHARGES THE
09:25AM 10 GOVERNMENT BRINGS AGAINST MR. BALWANI. THE INDICTMENT IS NOT
09:25AM 11 EVIDENCE AND DOES NOT PROVE ANYTHING.

09:25AM 12 MR. BALWANI HAS PLEADED NOT GUILTY TO THE CHARGES AND IS
09:25AM 13 PRESUMED INNOCENT UNLESS AND UNTIL THE GOVERNMENT PROVES
09:25AM 14 MR. BALWANI GUILTY BEYOND A REASONABLE DOUBT. IN ADDITION,
09:25AM 15 MR. BALWANI HAS THE RIGHT TO REMAIN SILENT AND NEVER HAS TO
09:25AM 16 PROVE INNOCENCE OR PRESENT ANY EVIDENCE.

09:25AM 17 IN ORDER TO HELP YOU FOLLOW THE EVIDENCE, I WILL NOW GIVE
09:25AM 18 YOU A BRIEF SUMMARY OF THE ELEMENTS OF THE CHARGED OFFENSES.
09:26AM 19 AS I HAVE SAID, AT THE END OF THE TRIAL I WILL GIVE YOU MORE
09:26AM 20 DETAILED INSTRUCTIONS THAT WILL CONTROL YOUR DELIBERATIONS.

09:26AM 21 THERE ARE TWELVE COUNTS IN THE INDICTMENT. THE GOVERNMENT
09:26AM 22 MUST PROVE EACH ELEMENT FOR EACH COUNT BEYOND A REASONABLE
09:26AM 23 DOUBT TO MAKE ITS CASE.

09:26AM 24 COUNTS ONE AND TWO CHARGE CONSPIRACY TO COMMIT WIRE FRAUD.
09:26AM 25 MR. BALWANI IS CHARGED IN COUNT ONE WITH CONSPIRING TO

09:26AM 1 COMMIT WIRE FRAUD AGAINST INVESTORS IN THERANOS DURING THE
09:26AM 2 PERIOD 2010 TO 2015.

09:26AM 3 MR. BALWANI IS CHARGED IN COUNT TWO OF THE INDICTMENT WITH
09:26AM 4 CONSPIRING TO COMMIT WIRE FRAUD AGAINST PATIENTS WHO PAID FOR
09:26AM 5 THERANOS BLOOD TESTING SERVICES DURING THE PERIOD 2013 TO 2016.

09:26AM 6 A CONSPIRACY IS A KIND OF CRIMINAL PARTNERSHIP, AN
09:27AM 7 AGREEMENT OF TWO OR MORE PERSONS TO COMMIT ONE OR MORE CRIMES.
09:27AM 8 THE CRIME OF CONSPIRACY IS THE AGREEMENT TO DO SOMETHING
09:27AM 9 UNLAWFUL; IT DOES NOT MATTER WHETHER THE CRIME AGREED UPON WAS
09:27AM 10 COMMITTED.

09:27AM 11 IN ORDER FOR MR. BALWANI TO BE FOUND GUILTY OF THE CHARGES
09:27AM 12 OF CONSPIRACY, THE GOVERNMENT MUST PROVE EACH OF THE FOLLOWING
09:27AM 13 ELEMENTS BEYOND A REASONABLE DOUBT:

09:27AM 14 FIRST, THAT THERE WAS AN AGREEMENT BETWEEN TWO OR MORE
09:27AM 15 PERSONS TO COMMIT WIRE FRAUD. I WILL DEFINE THE ELEMENTS OF
09:27AM 16 WIRE FRAUD IN A MINUTE.

09:27AM 17 AND SECOND, THAT MR. BALWANI BECAME A MEMBER OF EACH
09:27AM 18 ALLEGED CONSPIRACY KNOWING OF AT LEAST ONE OF ITS OBJECTS AND
09:27AM 19 INTENDING TO HELP ACCOMPLISH IT.

09:27AM 20 COUNTS THREE THROUGH TWELVE CHARGE WIRE FRAUD.

09:27AM 21 COUNTS THREE THROUGH EIGHT CHARGE WIRE FRAUD AGAINST
09:28AM 22 INVESTORS IN THERANOS.

09:28AM 23 COUNTS NINE THROUGH TWELVE CHARGE WIRE FRAUD AGAINST
09:28AM 24 PAYING THERANOS PATIENTS.

09:28AM 25 IN ORDER FOR MR. BALWANI TO BE FOUND GUILTY OF THE CHARGES

09:28AM 1 OF WIRE FRAUD, THE GOVERNMENT MUST PROVE EACH OF THE FOLLOWING
09:28AM 2 ELEMENTS BEYOND A REASONABLE DOUBT:

09:28AM 3 FIRST, THAT MR. BALWANI KNOWINGLY PARTICIPATED IN,
09:28AM 4 DEvised, OR INTENDED TO DEVISE A SCHEME OR PLAN TO DEFRAUD, OR
09:28AM 5 A SCHEME OR PLAN FOR OBTAINING MONEY OR PROPERTY BY MEANS OF
09:28AM 6 FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS, OR PROMISES.

09:28AM 7 A SCHEME TO DEFRAUD IS A DECEPTIVE SCHEME TO DEPRIVE A
09:28AM 8 PERSON OF MONEY OR PROPERTY.

09:28AM 9 SECOND, THAT THE STATEMENTS MADE AS PART OF THE SCHEME
09:28AM 10 WERE MATERIAL, THAT IS, THEY HAD A NATURAL TENDENCY TO
09:29AM 11 INFLUENCE OR WERE CAPABLE OF INFLUENCING A PERSON TO PART WITH
09:29AM 12 MONEY OR PROPERTY;

09:29AM 13 THIRD, THAT MR. BALWANI ACTED WITH THE INTENT TO DEFRAUD,
09:29AM 14 THAT IS, THE INTENT TO DECEIVE AND CHEAT; AND.

09:29AM 15 FOURTH, THAT MR. BALWANI USED, OR CAUSED TO BE USED, AN
09:29AM 16 INTERSTATE OR FOREIGN WIRE COMMUNICATION TO CARRY OUT OR
09:29AM 17 ATTEMPT TO CARRY OUT AN ESSENTIAL PART OF THE SCHEME.

09:29AM 18 THE EVIDENCE YOU ARE TO CONSIDER IN DECIDING WHAT THE
09:29AM 19 FACTS CONSIST OF:

09:29AM 20 ONE, THE SWORN TESTIMONY OF ANY WITNESS;

09:29AM 21 TWO, THE EXHIBITS THAT ARE RECEIVED IN EVIDENCE; AND,

09:29AM 22 THREE, ANY FACTS TO WHICH THE PARTIES HAVE AGREED.

09:29AM 23 THE FOLLOWING THINGS ARE NOT EVIDENCE, AND YOU MUST NOT
09:29AM 24 CONSIDER THEM AS EVIDENCE IN DECIDING THE FACTS OF THIS CASE:

09:30AM 25 1. STATEMENTS AND ARGUMENTS OF THE ATTORNEYS;

2. QUESTIONS AND OBJECTIONS OF THE ATTORNEYS;

3. TESTIMONY THAT I INSTRUCT YOU TO DISREGARD; AND,

4. ANYTHING THAT YOU MAY SEE OR HEAR WHEN THE COURT IS
NOT IN SESSION EVEN IF WHAT YOU SEE OR HEAR IS DONE OR SAID BY
ONE OF THE PARTIES OR BY ONE OF THE WITNESSES.

EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL. DIRECT EVIDENCE
IS DIRECT PROOF OF A FACT, SUCH AS TESTIMONY BY A WITNESS ABOUT
WHAT THAT WITNESS PERSONALLY SAW OR HEARD OR DID.

CIRCUMSTANTIAL EVIDENCE IS INDIRECT EVIDENCE, THAT IS, IT
IS PROOF OF ONE OR MORE FACTS FROM WHICH YOU CAN FIND ANOTHER
FACT.

YOU ARE TO CONSIDER BOTH DIRECT AND CIRCUMSTANTIAL
EVIDENCE. EITHER CAN BE USED TO PROVE ANY FACT. THE LAW MAKES
NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT
OR CIRCUMSTANTIAL EVIDENCE. IT IS FOR YOU TO DECIDE HOW MUCH
WEIGHT TO GIVE TO ANY EVIDENCE.

NOW, BY WAY OF EXAMPLE, IF YOU WAKE UP IN THE MORNING AND
YOU SEE THAT THE SIDEWALK IS WET, YOU MAY FIND FROM THAT FACT
THAT IT RAINED DURING THE NIGHT. HOWEVER, OTHER EVIDENCE SUCH
AS A TURNED ON GARDEN HOSE MAY PROVIDE AN EXPLANATION FOR THE
WATER ON THE SIDEWALK. THEREFORE, BEFORE YOU DECIDE THAT A
FACT HAS BEEN PROVEN BY CIRCUMSTANTIAL EVIDENCE, YOU MUST
CONSIDER ALL OF THE EVIDENCE IN THE LIGHT OF REASON,
EXPERIENCE, AND COMMON SENSE.

THERE ARE RULES OF EVIDENCE THAT CONTROL WHAT CAN BE

09:32AM 1 RECEIVED IN EVIDENCE. WHEN A LAWYER ASKS A QUESTION OR OFFERS
09:32AM 2 AN EXHIBIT IN EVIDENCE AND A LAWYER ON THE OTHER SIDE THINKS
09:32AM 3 THAT IT IS NOT PERMITTED BY THE RULES OF EVIDENCE, THAT LAWYER
09:32AM 4 MAY OBJECT.

09:32AM 5 IF I OVERRULE THE OBJECTION, THE QUESTION MAY BE ANSWERED
09:32AM 6 OR THE EXHIBIT RECEIVED.

09:32AM 7 IF I SUSTAIN THE OBJECTION, THE QUESTION CANNOT BE
09:32AM 8 ANSWERED, OR THE EXHIBIT CANNOT BE RECEIVED.

09:32AM 9 WHETHER I SUSTAIN AN OBJECTION TO A -- WHENEVER I SUSTAIN
09:32AM 10 AN OBJECTION TO A QUESTION, YOU MUST IGNORE THE QUESTION AND
09:32AM 11 MUST NOT GUESS WHAT THE ANSWER WOULD HAVE BEEN.

09:32AM 12 THE PARTIES ARE LIKELY TO TURN TO THE COURT MANY TIMES
09:32AM 13 OVER THE COURSE OF THE TRIAL FOR DECISIONS AS TO THE EVIDENCE
09:32AM 14 IN THE CASE. DO NOT CONSIDER MY SUSTAINING OR OVERRULING AN
09:32AM 15 OBJECTION AS ANY INDICATION OF MY OPINION OF THE CASE OR WHAT
09:32AM 16 YOUR VERDICT SHOULD BE.

09:33AM 17 SOMETIMES I MAY ORDER THAT EVIDENCE BE STRICKEN FROM THE
09:33AM 18 RECORD AND THAT YOU DISREGARD OR IGNORE THE EVIDENCE. THAT
09:33AM 19 MEANS THAT WHEN YOU ARE DECIDING THE CASE, YOU MUST NOT
09:33AM 20 CONSIDER THE EVIDENCE THAT I TOLD YOU TO DISREGARD.

09:33AM 21 IN DECIDING THE FACTS IN THIS CASE, YOU MAY HAVE TO DECIDE
09:33AM 22 WHICH TESTIMONY TO BELIEVE AND WHICH TESTIMONY NOT TO BELIEVE.
09:33AM 23 YOU MAY BELIEVE EVERYTHING A WITNESS SAYS, OR PART OF IT, OR
09:33AM 24 NONE OF IT.

09:33AM 25 IN CONSIDERING THE TESTIMONY OF ANY WITNESS, YOU MAY TAKE

09:33AM 1 INTO ACCOUNT:

09:33AM 2 THE WITNESS'S OPPORTUNITY AND ABILITY TO SEE OR HEAR OR

09:33AM 3 KNOW THE THINGS TESTIFIED TO;

09:33AM 4 THE WITNESS'S MEMORY;

09:33AM 5 THE WITNESS'S MANNER WHILE TESTIFYING;

09:33AM 6 THE WITNESS'S INTEREST IN THE OUTCOME OF THE CASE, IF ANY;

09:33AM 7 THE WITNESS'S BIAS OR PREJUDICE, IF ANY;

09:34AM 8 WHETHER OTHER EVIDENCE CONTRADICTED THE WITNESS'S

09:34AM 9 TESTIMONY;

09:34AM 10 THE REASONABLENESS OF THE WITNESS'S TESTIMONY IN LIGHT OF

09:34AM 11 ALL OF THE EVIDENCE; AND,

09:34AM 12 ANY OTHER FACTORS THAT BEAR ON BELIEVABILITY.

09:34AM 13 YOU MUST AVOID BIAS, CONSCIOUS OR UNCONSCIOUS, BASED ON A

09:34AM 14 WITNESS'S RACE, COLOR, RELIGIOUS BELIEFS, NATIONAL ANCESTRY,

09:34AM 15 SEXUAL ORIENTATION, GENDER IDENTITY, GENDER, OR ECONOMIC

09:34AM 16 CIRCUMSTANCES IN YOUR DETERMINATION OF CREDIBILITY.

09:34AM 17 THE WEIGHT OF THE EVIDENCE AS TO A FACT DOES NOT

09:34AM 18 NECESSARILY DEPEND ON THE NUMBER OF WITNESSES WHO TESTIFY ABOUT

09:34AM 19 IT. WHAT IS IMPORTANT IS HOW BELIEVABLE THE WITNESSES ARE AND

09:34AM 20 HOW MUCH WEIGHT YOU THINK THEIR TESTIMONY DESERVES.

09:34AM 21 I'LL NOW SAY A FEW WORDS ABOUT YOUR CONDUCT AS JURORS.

09:35AM 22 FIRST, KEEP AN OPEN MIND THROUGHOUT THE TRIAL, AND DO NOT

09:35AM 23 DECIDE WHAT THE VERDICT SHOULD BE UNTIL YOU AND YOUR FELLOW

09:35AM 24 JURORS HAVE COMPLETED YOUR DELIBERATIONS AT THE END OF THE

09:35AM 25 CASE.

09:35AM 1 SECOND, BECAUSE YOU MUST DECIDE THIS CASE BASED ONLY ON
09:35AM 2 THE EVIDENCE RECEIVED IN THE CASE AND ON MY INSTRUCTIONS AS TO
09:35AM 3 THE LAW THAT APPLIES, YOU MUST NOT BE EXPOSED TO ANY OTHER
09:35AM 4 INFORMATION ABOUT THE CASE OR TO THE ISSUES IT INVOLVES DURING
09:35AM 5 THE COURSE OF YOUR JURY DUTY. THUS, UNTIL THE END OF THE CASE
09:35AM 6 OR UNLESS I TELL YOU OTHERWISE:

09:35AM 7 DO NOT COMMUNICATE WITH ANYONE IN ANY WAY AND DO NOT LET
09:35AM 8 ANYONE ELSE COMMUNICATE WITH YOU IN ANY WAY ABOUT THE MERITS OF
09:35AM 9 THE CASE OR ANYTHING TO DO WITH IT.

09:35AM 10 THIS RESTRICTION INCLUDES DISCUSSING THE CASE IN PERSON,
09:35AM 11 IN WRITING, BY PHONE, TABLET, OR COMPUTER, OR ANY OTHER MEANS,
09:36AM 12 VIA EMAIL, VIA TEXT MESSAGING, OR ANY INTERNET CHAT ROOM, BLOG,
09:36AM 13 WEBSITE, OR APPLICATION, INCLUDING BUT NOT LIMITED TO FACEBOOK,
09:36AM 14 YOUTUBE, TWITTER, INSTAGRAM, LINKEDIN, SNAPCHAT, TIKTOK,
09:36AM 15 REDDIT, OR ANY OTHER FORMS OF SOCIAL MEDIA.

09:36AM 16 THIS RESTRICTION APPLIES TO COMMUNICATING WITH YOUR FELLOW
09:36AM 17 JURORS UNTIL I GIVE YOU THE CASE FOR DELIBERATION, AND IT
09:36AM 18 APPLIES TO COMMUNICATING WITH EVERYONE ELSE INCLUDING YOUR
09:36AM 19 FAMILY MEMBERS, YOUR EMPLOYER, THE MEDIA OR PRESS, AND THE
09:36AM 20 PEOPLE INVOLVED IN THE TRIAL, ALTHOUGH YOU MAY NOTIFY YOUR
09:36AM 21 FAMILY AND YOUR EMPLOYER THAT YOU HAVE BEEN SEATED AS A JUROR
09:36AM 22 IN THE CASE AND HOW LONG YOU EXPECT THE TRIAL TO LAST.

09:36AM 23 BUT IF YOU ARE ASKED OR APPROACHED IN ANY WAY ABOUT YOUR
09:36AM 24 JURY SERVICE OR ANYTHING ABOUT THIS CASE, YOU MUST RESPOND THAT
09:37AM 25 YOU HAVE BEEN ORDERED NOT TO DISCUSS THE MATTER. IN ADDITION,

09:37AM 1 YOU MUST REPORT THE CONTACT TO THE COURT.

09:37AM 2 BECAUSE YOU WILL RECEIVE ALL OF THE EVIDENCE AND LEGAL

09:37AM 3 INSTRUCTION YOU PROPERLY MAY CONSIDER TO RETURN A VERDICT:

09:37AM 4 DO NOT READ, WATCH, OR LISTEN TO ANY NEWS OR MEDIA

09:37AM 5 ACCOUNTS OR COMMENTARY ABOUT THE CASE OR ANYTHING TO DO WITH

09:37AM 6 IT; DO NOT DO ANY RESEARCH, SUCH AS CONSULTING DICTIONARIES,

09:37AM 7 SEARCHING THE INTERNET OR USING OTHER REFERENCE MATERIALS; AND

09:37AM 8 DO NOT MAKE ANY INVESTIGATION OR IN ANY OTHER WAY TRY TO LEARN

09:37AM 9 ABOUT THE CASE ON YOUR OWN.

09:37AM 10 DO NOT VISIT OR VIEW ANY PLACE DISCUSSED IN THIS CASE, AND

09:37AM 11 DO NOT USE THE INTERNET OR ANY OTHER RESOURCE TO SEARCH FOR OR

09:37AM 12 VIEW ANY PLACE DISCUSSED DURING THE TRIAL.

09:37AM 13 ALSO, DO NOT DO ANY RESEARCH ABOUT THIS CASE, THE LAW, OR

09:38AM 14 THE PEOPLE INVOLVED, INCLUDING THE PARTIES, THE WITNESSES, OR

09:38AM 15 THE LAWYERS, UNTIL YOU HAVE BEEN EXCUSED AS JURORS.

09:38AM 16 IF YOU HAPPEN TO READ OR HEAR ANYTHING TOUCHING ON THIS

09:38AM 17 CASE IN THE MEDIA, TURN AWAY AND REPORT IT TO ME AS SOON AS

09:38AM 18 POSSIBLE.

09:38AM 19 MANY OF YOU RECEIVE WHAT ARE CALLED "PUSH NOTIFICATIONS"

09:38AM 20 ON YOUR SMARTPHONES, WHICH CAN PROVIDE NEWS HEADLINES ON YOUR

09:38AM 21 SCREEN EVEN WHEN YOU ARE NOT OTHERWISE LOOKING FOR NEWS. SO

09:38AM 22 THAT YOU DO NOT INADVERTENTLY RECEIVE NEWS ALERTS ON YOUR

09:38AM 23 SCREENS DURING THE TRIAL, YOU ARE TO TURN OFF ALL SUCH "PUSH

09:38AM 24 NOTIFICATIONS" FOR ANY NEWS "APP" ON YOUR PHONE UNTIL THE TRIAL

09:38AM 25 IS CONCLUDED.

09:38AM 1 THESE RULES PROTECT EACH PARTY'S RIGHT TO HAVE THIS CASE
09:38AM 2 DECIDED ONLY ON EVIDENCE THAT HAS BEEN PRESENTED HERE IN COURT.

09:39AM 3 WITNESSES HERE IN COURT TAKE AN OATH TO TELL THE TRUTH,
09:39AM 4 AND THE ACCURACY OF THEIR TESTIMONY IS TESTED THROUGH THE TRIAL
09:39AM 5 PROCESS.

09:39AM 6 IF YOU DO ANY RESEARCH OR INVESTIGATION OUTSIDE THE
09:39AM 7 COURTROOM OR GAIN ANY INFORMATION THROUGH IMPROPER
09:39AM 8 COMMUNICATIONS, THEN YOUR VERDICT MAY BE INFLUENCED BY
09:39AM 9 INACCURATE, INCOMPLETE, OR MISLEADING INFORMATION THAT HAS NOT
09:39AM 10 BEEN TESTED BY THE TRIAL PROCESS.

09:39AM 11 EACH OF THE PARTIES IS ENTITLED TO A FAIR TRIAL BY AN
09:39AM 12 IMPARTIAL JURY, AND IF YOU DECIDE THE CASE BASED ON INFORMATION
09:39AM 13 NOT PRESENTED IN COURT, YOU WILL HAVE DENIED THE PARTIES A FAIR
09:39AM 14 TRIAL.

09:39AM 15 REMEMBER, YOU HAVE TAKEN AN OATH TO FOLLOW THE RULES, AND
09:39AM 16 IT IS VERY IMPORTANT THAT YOU DO FOLLOW THESE RULES.

09:39AM 17 A JUROR WHO VIOLATES THESE RESTRICTIONS JEOPARDIZES THE
09:40AM 18 FAIRNESS OF THESE PROCEEDINGS AND A MISTRIAL COULD RESULT THAT
09:40AM 19 WOULD REQUIRE THE ENTIRE TRIAL PROCESS TO START OVER. IF ANY
09:40AM 20 JUROR IS EXPOSED TO ANY OUTSIDE INFORMATION, PLEASE NOTIFY THE
09:40AM 21 COURT IMMEDIATELY.

09:40AM 22 NOW, LADIES AND GENTLEMEN, OUR COURTHOUSE HERE, AS YOU
09:40AM 23 KNOW, IS VERY INTIMATE. IT'S A SMALL COURTHOUSE, AND YOU WILL
09:40AM 24 TRAVEL THROUGH THE ELEVATORS, OUR HALLWAYS OUTSIDE OF THE
09:40AM 25 COURTROOM ON YOUR WAY IN AND FROM PARKING LOTS AND OTHER

TRANSPORTATION.

IT MAY BE THAT YOU WILL CROSS PATHS WITH ONE OF THE PARTIES IN THIS CASE, ONE OF THE LAWYERS, OR SOMEBODY ATTACHED TO THIS CASE. IT MAY BE THAT YOU'RE IN AN ELEVATOR WITH THEM OR THE HALLWAY WITH THEM, AND YOU MAY SMILE AND THEY MAY LOOK THE OTHER WAY OR LOOK AT THE TOP OF THEIR SHOES OR THEY MAY NOT RETURN YOUR SMILE.

NOW, LET ME ASSURE YOU, LADIES AND GENTLEMEN, ALL OF THESE PARTIES HERE WERE PROPERLY RAISED. THEY HAVE MANNERS. BUT THEY KNOW THAT THEY ARE NOT TO COMMUNICATE WITH ANYONE, WITH ANY OF YOU. SO PLEASE DO NOT BE OFFENDED IF YOU SEE SOMEONE, IF THEY STEP ASIDE, IF THEY LOOK THE OTHER WAY. THEY'RE NOT DOING THAT BECAUSE THEY'RE RUDE. THEY'RE DOING THAT BECAUSE THEY KNOW THE RULES OF THE COURT AND THEY WANT TO RESPECT YOU AND GIVE YOU SPACE HERE.

SO PLEASE RECOGNIZE THAT. AGAIN, YOU MAY PASS SOME OF THESE PARTIES IN THE HALLWAYS, OUTSIDE OF THE BUILDING SOMEWHERE, AND THEY WILL AVOID CONTACT WITH YOU, BUT PLEASE RESPECT THEY'RE NOT BEING RUDE. THEY WANT TO GIVE YOU SPACE, AND THEY KNOW THE RULES OF THE COURT.

SO THANK YOU FOR THAT.

AT THE END OF THE TRIAL YOU WILL HAVE TO MAKE YOUR DECISION BASED ON WHAT YOU RECALL OF THE EVIDENCE. YOU WILL NOT HAVE A WRITTEN TRANSCRIPT OF THE TRIAL, SO I URGE YOU TO PAY CLOSE ATTENTION TO THE TESTIMONY AS IT IS GIVEN.

09:41AM 1 IF YOU WISH, YOU MAY TAKE NOTES TO HELP YOU REMEMBER THE
09:42AM 2 EVIDENCE. IF YOU DO TAKE NOTES, PLEASE KEEP THEM TO YOURSELF
09:42AM 3 UNTIL YOU AND YOUR FELLOW JURORS GO TO THE JURY ROOM TO DECIDE
09:42AM 4 THE CASE. DO NOT LET NOTE TAKING DISTRACT YOU FROM BEING
09:42AM 5 ATTENTIVE. WHEN YOU LEAVE COURT FOR RECESSES, YOUR NOTES
09:42AM 6 SHOULD BE LEFT IN THE JURY ROOM. NO ONE WILL READ YOUR NOTES.

09:42AM 7 WHETHER OR NOT YOU TAKE NOTES, YOU SHOULD RELY ON YOUR OWN
09:42AM 8 MEMORY OF THE EVIDENCE. NOTES ARE ONLY TO ASSIST YOUR MEMORY.
09:42AM 9 YOU SHOULD NOT BE OVERLY INFLUENCED BY YOUR NOTES OR THOSE OF
09:42AM 10 YOUR FELLOW JURORS.

09:42AM 11 THE NEXT PHASE OF THE TRIAL WILL NOW BEGIN. FIRST, EACH
09:42AM 12 SIDE MAY MAKE AN OPENING STATEMENT. AN OPENING STATEMENT IS
09:42AM 13 NOT EVIDENCE. IT IS SIMPLY AN OUTLINE TO HELP YOU UNDERSTAND
09:42AM 14 WHAT THAT PARTY EXPECTS THE EVIDENCE WILL SHOW. A PARTY IS NOT
09:43AM 15 REQUIRED TO MAKE AN OPENING STATEMENT.

09:43AM 16 THE GOVERNMENT WILL THEN PRESENT EVIDENCE AND COUNSEL FOR
09:43AM 17 THE DEFENDANT MAY CROSS-EXAMINE.

09:43AM 18 THEN, IF THE DEFENDANT CHOOSES TO OFFER EVIDENCE, COUNSEL
09:43AM 19 FOR THE GOVERNMENT MAY CROSS-EXAMINE.

09:43AM 20 ONLY THE LAWYERS AND I ARE ALLOWED TO ASK QUESTIONS OF THE
09:43AM 21 WITNESSES. A JUROR IS NOT PERMITTED TO ASK QUESTIONS OF
09:43AM 22 WITNESSES.

09:43AM 23 IF, HOWEVER, YOU ARE UNABLE TO HEAR OR TO SEE A WITNESS OR
09:43AM 24 A LAWYER OR ANY EXHIBIT ON YOUR SCREENS, PLEASE RAISE YOUR
09:43AM 25 HAND, AND I WILL CORRECT THAT SITUATION.

09:43AM 1 AFTER THE EVIDENCE HAS BEEN PRESENTED, THE ATTORNEYS WILL
09:43AM 2 MAKE CLOSING ARGUMENTS, AND THEN I WILL INSTRUCT YOU ON THE LAW
09:43AM 3 THAT APPLIES TO THE CASE.

09:43AM 4 AFTER THAT, YOU WILL GO TO THE JURY ROOM TO DELIBERATE
09:43AM 5 YOUR VERDICT.

09:44AM 6 DURING THE TRIAL, I MAY NEED TO TAKE UP LEGAL MATTERS WITH
09:44AM 7 THE ATTORNEYS PRIVATELY, EITHER BY HAVING A CONFERENCE AT THE
09:44AM 8 BENCH WHEN THE JURY IS PRESENT IN THE COURTROOM OR BY CALLING A
09:44AM 9 RECESS. PLEASE UNDERSTAND THAT WHILE YOU ARE WAITING, WE WILL
09:44AM 10 BE WORKING. THE PURPOSE OF THESE CONFERENCES IS NOT TO KEEP
09:44AM 11 RELEVANT INFORMATION FROM YOU, BUT RATHER TO DECIDE HOW CERTAIN
09:44AM 12 EVIDENCE IS TO BE TREATED UNDER THE RULES OF EVIDENCE AND TO
09:44AM 13 AVOID CONFUSION AND ERROR.

09:44AM 14 OF COURSE, WE WILL DO WHAT WE CAN TO KEEP THE NUMBER AND
09:44AM 15 THE LENGTH OF THESE CONFERENCES TO A MINIMUM. I MAY NOT ALWAYS
09:44AM 16 GRANT AN ATTORNEY'S REQUEST FOR A CONFERENCE. DO NOT CONSIDER
09:44AM 17 MY GRANTING OR DENYING A REQUEST FOR A CONFERENCE AS ANY
09:44AM 18 INDICATION OF MY OPINION OF THE CASE OR WHAT YOUR VERDICT
09:44AM 19 SHOULD BE.

09:45AM 20 FOR REASONS THAT DO NOT CONCERN YOU, THE CASE AGAINST THE
09:45AM 21 CODEFENDANT ELIZABETH HOLMES IS NOT BEFORE YOU. DO NOT
09:45AM 22 SPECULATE WHY.

09:45AM 23 THIS FACT SHOULD NOT INFLUENCE YOUR VERDICTS WITH
09:45AM 24 REFERENCE TO MR. BALWANI, AND YOU MUST BASE YOUR VERDICTS
09:45AM 25 SOLELY ON THE EVIDENCE AGAINST MR. BALWANI.

09:45AM 1 THAT CONCLUDES THE COURT'S READING OF THE PRELIMINARY
09:45AM 2 INSTRUCTIONS.

09:45AM 3 ANY OBJECTIONS TO THE READING OF THE PRELIMINARY
09:45AM 4 INSTRUCTIONS?

09:45AM 5 MR. LEACH: NO, YOUR HONOR.

09:45AM 6 MR. COOPERSMITH: YES, YOUR HONOR.

09:45AM 7 THE COURT: THANK YOU.

09:45AM 8 DOES THE GOVERNMENT HAVE AN OPENING STATEMENT?

09:45AM 9 MR. LEACH: WE DO, YOUR HONOR.

09:45AM 10 THE COURT: PLEASE PROCEED. THANK YOU.

09:45AM 11 MR. LEACH: MAY I REMOVE MY MASK?

09:45AM 12 THE COURT: YES.

09:46AM 13 MR. LEACH: YOUR HONOR, MAY I HAVE ONE MOMENT WITH
09:46AM 14 MS. ROBINSON?

09:46AM 15 THE COURT: YES. THANK YOU.

09:46AM 16 THE CLERK: I THINK I NEED TO RESET THE SYSTEM.

09:46AM 17 THE COURT: MR. LEACH, I BEG YOUR PARDON, WE'RE
09:46AM 18 GOING TO NEED TO RESET OUR SYSTEM HERE.

09:46AM 19 MR. LEACH: THANK YOU, YOUR HONOR.

09:46AM 20 (PAUSE IN PROCEEDINGS.)

09:46AM 21 THE COURT: FOLKS, IF YOU WANT TO TAKE A STANDING
09:46AM 22 STRETCH FOR JUST A MOMENT, FEEL FREE TO BEFORE WE BEGIN
09:46AM 23 ARGUMENT.

09:46AM 24 FEEL FREE TO STAND UP FOR 30 SECONDS.

09:47AM 25 (STRETCHING.)

09:48AM 1 THE COURT: LADIES AND GENTLEMEN, I APOLOGIZE, IT
09:48AM 2 SEEMS LIKE WE HAVE A SILICON VALLEY GLITCH IN OUR SYSTEM.

09:48AM 3 (LAUGHTER.)

09:48AM 4 THE COURT: WE'RE TRYING TO CORRECT THAT.

09:48AM 5 I APOLOGIZE TO YOU, MR. LEACH, AND YOUR COLLEAGUE
09:48AM 6 OPPOSITE.

09:48AM 7 IF YOU WERE GOING TO USE THIS -- I KNOW YOU WANTED TO USE
09:48AM 8 THIS.

09:48AM 9 I'M CONFIDENT NOBODY IS WATCHING ANY BASKETBALL GAMES
09:48AM 10 RIGHT NOW THAT ARE INTERFERING WITH THIS.

09:48AM 11 MR. LEACH: NOT THAT I'M AWARE OF, YOUR HONOR.

09:49AM 12 (PAUSE IN PROCEEDINGS.)

09:49AM 13 THE COURT: I WONDER IF WE SHOULDN'T -- RATHER THAN
09:49AM 14 HAVE FOLKS WAIT HERE, LET'S TAKE A BRIEF RECESS, AND WE'LL
09:49AM 15 SUMMON OUR I.T. PERSON TO SEE IF WE CAN GET A QUICK FIX TO
09:49AM 16 THIS.

09:49AM 17 I APOLOGIZE, COUNSEL. I'M SORRY.

09:49AM 18 MR. LEACH: THANK YOU, YOUR HONOR.

09:49AM 19 THE COURT: SO LET'S TAKE A RECESS, LADIES AND
09:49AM 20 GENTLEMEN.

09:50AM 21 (JURY OUT AT 9:50 A.M.)

09:50AM 22 THE COURT: PLEASE BE SEATED. THANK YOU.

09:50AM 23 THE RECORD SHOULD REFLECT THAT THE JURY HAS LEFT THE ROOM
09:50AM 24 FOR OUR BREAK. WE ARE GOING TO TRY TO RESOLVE THIS WITH OUR
09:50AM 25 I.T. PERSON. I THINK A CALL HAS BEEN PUT INTO SAN FRANCISCO.

09:50AM 1 I'LL JUST STEP DOWN.

09:50AM 2 ANYTHING BEFORE I STEP DOWN, COUNSEL?

09:50AM 3 MR. LEACH: NO, YOUR HONOR. THANK YOU.

09:50AM 4 MR. COOPERSMITH: NO, YOUR HONOR.

09:50AM 5 THE COURT: I APOLOGIZE, I'M SORRY. WE'LL GET

09:50AM 6 THROUGH THIS AS QUICK AS WE CAN. THANK YOU.

09:50AM 7 (RECESS FROM 9:50 A.M. UNTIL 10:08 A.M.)

10:08AM 8 (JURY IN AT 10:08 A.M.)

10:08AM 9 THE COURT: WE'RE BACK ON THE RECORD. ALL PARTIES

10:08AM 10 PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

10:08AM 11 OUR JURORS AND ALTERNATES ARE PRESENT. THANK YOU, LADIES

10:08AM 12 AND GENTLEMEN. I APOLOGIZE FOR THE INCONVENIENCE.

10:08AM 13 MR. LEACH, I THINK WE'VE SOLVED THE ISSUE.

10:08AM 14 IF YOU HAVE AN OPENING STATEMENT.

10:08AM 15 MR. LEACH: YES, YOUR HONOR.

10:08AM 16 THANK YOU, MS. ROBINSON.

10:08AM 17 **(COUNSEL FOR GOVERNMENT GAVE THEIR OPENING STATEMENT.)**

10:09AM 18 MR. LEACH: THANK YOU, LADIES AND GENTLEMEN, FOR

10:09AM 19 YOUR PATIENCE THIS MORNING. I THINK EVERYTHING IS WORKING NOW.

10:09AM 20 MAY IT PLEASE THE COURT.

10:09AM 21 LADIES AND GENTLEMEN OF THE JURY, THE DEFENDANT,

10:09AM 22 RAMESH BALWANI, WAS THE PRESIDENT AND CHIEF OPERATING OFFICER

10:09AM 23 OF THERANOS, A BLOOD TESTING COMPANY HEADQUARTERED IN

10:09AM 24 SILICON VALLEY.

10:09AM 25 THE EVIDENCE WILL SHOW THAT THE DEFENDANT LIED TO

POTENTIAL INVESTORS IN THERANOS AND TO PATIENTS WHO USED
THERANOS'S BLOOD TESTING SERVICES.

HE MISLED THEM INTO BELIEVING THAT THERANOS HAD DEVELOPED
A MINI BLOOD ANALYZER THAT COULD RUN VIRTUALLY ANY BLOOD TEST
FROM A DROP OF BLOOD DRAWN FROM THE FINGER, NOT FROM THE VEIN.

HE DID THIS TO GET MONEY FROM INVESTORS, AND HE DID THIS
TO GET MONEY AND BUSINESS FROM PAYING PATIENTS WHO WERE
COUNTING ON THERANOS TO DELIVER ACCURATE AND RELIABLE BLOOD
TESTS SO THAT THEY COULD MAKE IMPORTANT MEDICAL DECISIONS.

THE MINI BLOOD ANALYZER THAT THE DEFENDANT TOUTED WAS
NEVER ABLE TO DO MORE THAN 12 BLOOD TESTS, AND EVEN THOSE, IT
DID BADLY FOR THE SHORT PERIOD OF TIME IT WAS IN USE.

DURING THESE SCHEMES TO DEFRAUD, THE DEFENDANT AND
THERANOS MADE NUMEROUS FALSE AND MISLEADING CLAIMS ABOUT THE
CAPABILITIES AND ACCOMPLISHMENTS OF THERANOS AND ITS
TECHNOLOGY, INCLUDING THAT THE UNITED STATES MILITARY WAS
ACTUALLY USING THERANOS'S MINI BLOOD ANALYZER ON HELICOPTERS
AND IN THE BATTLEFIELD, THAT MAJOR PHARMACEUTICAL COMPANIES HAD
ENDORSED THERANOS'S TECHNOLOGY AND WERE EFFECTIVELY FUNDING ITS
OPERATIONS, AND THAT THERANOS HAD ACHIEVED AND WAS ON THE BRINK
OF ACHIEVING HUNDREDS OF MILLIONS OF DOLLARS IN REVENUE.

BUT NONE OF THAT WAS TRUE.

THIS IS A CASE ABOUT FRAUD, ABOUT LYING AND CHEATING TO
OBTAIN MONEY AND PROPERTY.

MR. BALWANI JOINED THERANOS IN THE FALL OF 2019 AS ITS

10:11AM 1 PRESIDENT AND CHIEF OPERATING OFFICER.

10:11AM 2 THE DEFENDANT HAD NO MEDICAL DEGREE. HE HAD NO EXPERIENCE
10:11AM 3 IN BLOOD TESTING. HE HAD NO EXPERIENCE BUILDING MEDICAL
10:11AM 4 DEVICES OR RUNNING A LABORATORY.

10:11AM 5 WHAT HE DID HAVE WAS A CONNECTION TO ELIZABETH HOLMES WHO
10:11AM 6 FORMED THERANOS IN 2003 AFTER DROPPING OUT OF COLLEGE WHEN SHE
10:11AM 7 WAS A TEENAGER.

10:11AM 8 HOLMES WAS THERANOS'S CHIEF EXECUTIVE OFFICER, OR ITS CEO,
10:12AM 9 AND BALWANI WAS HER ROMANTIC PARTNER. THE TWO HAD BEEN
10:12AM 10 ROMANTICALLY INVOLVED SINCE THE EARLY 2000S, AND THE TWO
10:12AM 11 CONTINUED TO BE ROMANTIC PARTNERS THROUGH THE MIDDLE OF 2016.

10:12AM 12 WITH NO MEDICAL EXPERIENCE AND NO BLOOD TESTING
10:12AM 13 EXPERIENCE, THE DEFENDANT ASSUMED THE ROLE OF PRESIDENT AND
10:12AM 14 CHIEF OPERATING OFFICER.

10:12AM 15 AT THE TIME, THERANOS WAS STRUGGLING FINANCIALLY. IT WAS
10:12AM 16 BARELY PAYING ITS EMPLOYEES. EARLY CUSTOMERS, INCLUDING PFIZER
10:12AM 17 AND SCHERING-PLOUGH, THE PHARMACEUTICAL COMPANIES, WERE
10:12AM 18 DECLINING TO GO FORWARD WITH THERANOS AFTER BRIEF, UNSUCCESSFUL
10:12AM 19 EXPERIENCES.

10:12AM 20 AND THE U.S. FOOD AND DRUG ADMINISTRATION, OR THE FDA, THE
10:12AM 21 AGENCY THAT POLICES OR REGULATES BLOOD TESTING DEVICES, HAD NOT
10:13AM 22 APPROVED THERANOS'S MINI BLOOD ANALYZER AND WAS NOWHERE NEAR
10:13AM 23 DOING SO.

10:13AM 24 AFTER BALWANI JOINED THE COMPANY, HE AND ELIZABETH HOLMES
10:13AM 25 BEGAN MAKING GRANDIOSE SPECTACULAR CLAIMS ABOUT THERANOS'S

10:13AM 1 CAPABILITIES AND ITS ACCOMPLISHMENTS. THEY BEGAN TRYING TO
10:13AM 2 CONVINCE RETAILERS LIKE SAFEWAY AND WALGREENS THAT THERANOS'S
10:13AM 3 UNPROVEN TECHNOLOGY WAS READY FOR ACTUAL USE ON PATIENTS.

10:13AM 4 THEY TOLD SAFEWAY AND WALGREENS THAT THERANOS HAD
10:13AM 5 DEVELOPED A DEVICE, A MINI BLOOD ANALYZER, THAT COULD TEST
10:13AM 6 SMALL AMOUNTS OF BLOOD DRAWN FROM A FINGER, NOT FROM A VEIN, IN
10:14AM 7 GROCERY STORES AND PHARMACIES.

10:14AM 8 I'VE PUT AN IMAGE OF THE DEVICE, THE MINI BLOOD ANALYZER,
10:14AM 9 ON THE SCREEN.

10:14AM 10 BALWANI AND HOLMES STATED TO WALGREENS AND SAFEWAY
10:14AM 11 THERANOS HAD DEVELOPED QUOTE, "GENERATIONS OF MINILAB DEVICES
10:14AM 12 THAT CAN RUN ANY BLOOD TEST IN REALTIME FOR LESS THAN THE
10:14AM 13 TRADITIONAL COST OF CENTRAL LAB TESTS."

10:14AM 14 THAT WAS UNTRUE.

10:14AM 15 THERANOS'S MINILAB ANALYZERS COULD NOT RUN ANY BLOOD TEST
10:14AM 16 IN REALTIME FOR LESS THAN THE COST OF TRADITIONAL CENTRAL
10:14AM 17 LABORATORIES. IT NEVER COULD.

10:14AM 18 AND ALTHOUGH PFIZER AND SCHERING-PLOUGH AND OTHER
10:14AM 19 PHARMACEUTICAL COMPANIES WERE SAYING NO TO THERANOS, BALWANI
10:14AM 20 AND ELIZABETH HOLMES SUGGESTED THAT THOSE RELATIONSHIPS WERE
10:14AM 21 FLOURISHING, STATED TO WALGREENS AND SAFEWAY THAT THERANOS
10:14AM 22 SYSTEMS HAD BEEN COMPREHENSIVELY VALIDATED BY 10 OF THE TOP 15
10:15AM 23 PHARMACEUTICAL COMPANIES.

10:15AM 24 BALWANI AND HOLMES AMAZED WALGREENS AND SAFEWAY WITH THESE
10:15AM 25 AND OTHER FALSE AND MISLEADING STATEMENTS. WALGREENS AND

1 SAFEWAY COMMITTED TO INVEST MILLIONS OF DOLLARS, AS DID OTHER
2 INVESTORS IN 2010.

3 THE IDEA, AT LEAST INITIALLY, WAS TO PUT THE MINI BLOOD
4 ANALYZER, THE DEVICE THAT YOU SEE HERE, IN SAFEWAY GROCERY
5 STORES AND WALGREENS PHARMACIES, AND TO TEST BLOOD FROM THE
6 FINGER, NOT THE VEIN. THE HOPE WAS THAT THE PATIENTS WOULD GET
7 THE RESULTS IN MINUTES WHILE THEY WERE DOING THEIR GROCERY
8 SHOPPING OR PICKING UP THEIR PRESCRIPTIONS. THAT WAS 2010.

9 THREE YEARS LATER, IN 2013, THE SPECTACULAR GRANDIOSE
10 PROMISES THAT THE DEFENDANT AND HOLMES HAD MADE WERE NOT
11 MATERIALIZING. THERE WERE NO MINI BLOOD ANALYZERS IN SAFEWAY.
12 THERE WERE NO MINI BLOOD ANALYZERS IN WALGREENS.

13 THE FDA WAS STILL NOWHERE NEAR APPROVING THE MINI BLOOD
14 ANALYZER, AND THERANOS HAD YET TO VALIDATE A SINGLE TEST FOR
15 USE ON THE MINI BLOOD ANALYZER FOR USE IN ACTUAL PATIENTS.

16 ON TOP OF ALL OF THIS, THERANOS WAS QUICKLY RUNNING OUT OF
17 MONEY.

18 ONE POTENTIAL CUSTOMER WHO HAD GIVEN THERANOS NEARLY
19 \$20 MILLION IN 2011 WAS DEMANDING ITS MONEY BACK. THERANOS WAS
20 FORCED TO RETURN THAT MONEY IN AUGUST OF 2013. THERANOS, YOU
21 WILL SEE, WAS RUNNING OUT OF TIME AND RUNNING OUT OF OPTIONS.

22 SO WHAT DID HOLMES AND BALWANI DO? THEY DECIDED TO
23 DECEIVE AND TO CHEAT.

24 TO GET THEMSELVES OUT OF THE HOLE THEY DUG, THEY DID THREE
25 THINGS:

10:17AM 1 FIRST, ALTHOUGH THEY HAD PROMISED THE THERANOS DEVICE --
10:17AM 2 THE MINI BLOOD ANALYZER THAT I SHOWED YOU -- WOULD BE USED FOR
10:17AM 3 THE WALGREENS AND SAFEWAY LAUNCHES, THEY DECIDED TO HAVE
10:17AM 4 THERANOS USE MACHINES MADE BY OTHER MANUFACTURERS, THIRD
10:17AM 5 PARTIES, NOT THERANOS, TO DO THE PATIENT TESTING IN ITS
10:17AM 6 LABORATORY.

10:17AM 7 IN THE SUMMER OF 2013, IN WHAT YOU WILL HEAR WAS A RUSH
10:17AM 8 AND A SCRAMBLE, BALWANI AND HOLMES ORDERED THEIR SUBORDINATES
10:18AM 9 TO MODIFY THIRD PARTY MACHINES MANUFACTURED BY OTHERS SO THAT
10:18AM 10 THE MACHINES COULD RUN BLOOD TESTS FROM TINY BLOOD SAMPLES.
10:18AM 11 AND THEY DECIDED TO HAVE THOSE MACHINES, NOT SIMPLY THOSE MADE
10:18AM 12 BY THERANOS, DO THE BLOOD TESTING FOR THE WALGREENS LAUNCH.

10:18AM 13 HERE'S AN IMAGE OF ONE OF THOSE THIRD PARTY MACHINES.
10:18AM 14 THIS IS A DEVICE CALLED AN ADVIA 1800. IT'S MADE BY A COMPANY
10:18AM 15 CALLED SIEMENS, NOT THERANOS. AND IT CAN COST HUNDREDS OF
10:18AM 16 THOUSANDS OF DOLLARS.

10:18AM 17 IT'S A GOOD MACHINE, BUT IT'S BIG, AND IT'S BULKY. IT'S
10:18AM 18 WHAT THEY USE IN CENTRAL LABS, THE CENTRAL LABS THAT BALWANI
10:18AM 19 AND HOLMES DISDAINED. AND MOST IMPORTANTLY, IT'S NOT MADE BY
10:19AM 20 THERANOS.

10:19AM 21 THIS WAS NOT THE MINI BLOOD ANALYZER THAT THE DEFENDANT
10:19AM 22 AND HOLMES HAD PROMISED. THIS WAS NOT MINIATURIZING THE LAB AS
10:19AM 23 BALWANI AND HOLMES HAD PROMISED. THIS WAS A WAY TO DECEIVE
10:19AM 24 WALGREENS AND TO DECEIVE SAFEWAY, TO STALL, AND TO BUY TIME
10:19AM 25 UNTIL HOLMES AND BALWANI COULD GET THE MINI BLOOD ANALYZER TO

1 ACTUALLY WORK.

2 THE SECOND THING THAT BALWANI AND HOLMES DID WAS TO INDUCE
3 A NEWS REPORTER NAMED JOE RAGO FROM "THE WALL STREET JOURNAL"
4 TO WRITE A NEWS STORY ABOUT THERANOS FALSELY SUGGESTING THAT
5 THERANOS HAD SUCCEEDED IN REVOLUTIONIZING BLOOD TESTING WITH A
6 MINI BLOOD ANALYZER THAT COULD DO ANY BLOOD TEST FROM A FINGER
7 DROP.

8 THERANOS, YOU WILL SEE, WORKED CLOSELY WITH MR. RAGO AND
9 REVIEWED AND APPROVED HIS PIECE BEFORE IT WAS PUBLISHED.

10 HERE ARE SOME OF THE EXCERPTS OF THE ARTICLE WHICH YOU
11 WILL SEE IN THIS CASE WERE FALSE AND MISLEADING AT THE TIME.

12 "THE SECRET THAT HUNDREDS OF EMPLOYEES ARE NOW REFINING
13 INVOLVES DEVICES THAT AUTOMATE AND MINIATURIZE MORE THAN 1,000
14 LABORATORY TESTS, FROM ROUTINE BLOOD WORK TO ADVANCED GENETIC
15 ANALYSES. THERANOS'S PROCESSES ARE FASTER, CHEAPER, AND MORE
16 ACCURATE THAN THE CONVENTIONAL METHODS AND REQUIRE ONLY
17 MICROSCOPIC BLOOD VOLUMES, NOT VIAL AFTER VIAL OF THE STUFF."

18 "THERANOS'S TECHNOLOGY ELIMINATES MULTIPLE LAB TRIPS
19 BECAUSE IT CAN RUN ANY COMBINATION OF TESTS, INCLUDING SETS OF
20 FOLLOW-ON TESTS, AT ONCE VERY QUICKLY, ALL FROM A MICRO
21 SAMPLE."

22 ANOTHER REPRESENTATION: "THERANOS CAN CONDUCT A BATTERY
23 OF TESTS FOR TENS OF DOLLARS, A PHRASE THAT DOES NOT EXIST IN
24 U.S. HEALTH CARE."

25 BALWANI AND HOLMES TIMED THIS "WALL STREET JOURNAL" PIECE

10:21AM 1 WITH A PRESS RELEASE, WHICH YOU SEE HERE, WHERE THERANOS
10:21AM 2 ANNOUNCED ITS BLOOD TESTS WOULD BE AVAILABLE IN WALGREENS, AND
10:21AM 3 BOLDLY ASSERTED QUOTE, "WITH FIRST LOCATION LAUNCHING THIS
10:21AM 4 MONTH IN SILICON VALLEY, CONSUMERS CAN NOW COMPLETE ANY
10:21AM 5 CLINICIAN-DIRECTED LAB TEST WITH AS LITTLE AS A FEW DROPS OF
10:21AM 6 BLOOD AND RESULTS AVAILABLE IN A MATTER OF HOURS."

10:22AM 7 THIS, LIKE THERANOS'S CLAIMS IN "THE WALL STREET JOURNAL"
10:22AM 8 ARTICLE, WAS FALSE AND MISLEADING, AS THE EVIDENCE WILL SHOW.

10:22AM 9 AT THE TIME OF THIS PRESS RELEASE, THERANOS WAS NOT ABLE
10:22AM 10 TO DO ANY OF ITS BLOOD TESTS ON ITS MINI ANALYZER ON PATIENTS
10:22AM 11 IN ITS LABORATORY. NOT A SINGLE ONE AT THE TIME OF THIS
10:22AM 12 ARTICLE.

10:22AM 13 THE THIRD THING THAT THE DEFENDANT AND HOLMES DID WAS TO
10:22AM 14 RAISE MONEY, LOTS OF MONEY. WITH THE MEDIA SPLASH FROM THE
10:22AM 15 RAGO ARTICLE AND THE PRESS RELEASE, THE DEFENDANT AND
10:22AM 16 ELIZABETH HOLMES STARTED TO RAISE MORE MONEY FROM INVESTORS,
10:22AM 17 AND BETWEEN THE END OF 2013 AND 2015 THEY RAISED HUNDREDS OF
10:22AM 18 MILLIONS OF DOLLARS FROM INVESTORS BASED ON FALSE AND
10:22AM 19 MISLEADING REPRESENTATIONS.

10:23AM 20 SOME OF THE FALSE AND MISLEADING REPRESENTATIONS WERE MADE
10:23AM 21 ORALLY IN MEETINGS WITH PROSPECTIVE INVESTORS. SOME OF THEM
10:23AM 22 WERE IN POWERPOINTS THAT BALWANI AND HOLMES DISTRIBUTED TO
10:23AM 23 INVESTORS OR HAD THEIR SUBORDINATES TO DISTRIBUTE TO INVESTORS.
10:23AM 24 SOME WERE IN NEWS ARTICLES THAT THERANOS ENGINEERS AND DIRECTED
10:23AM 25 TO PROSPECTIVE INVESTORS. SOMETIMES BALWANI TOOK THE LEAD WITH

10:23AM 1 A PARTICULAR INVESTOR, OTHER TIMES ELIZABETH HOLMES DID.

10:23AM 2 THE EVIDENCE WILL SHOW THAT MR. BALWANI AND MS. HOLMES
10:23AM 3 WERE PARTNERS IN VIRTUALLY EVERYTHING.

10:23AM 4 THE FALSE AND MISLEADING REPRESENTATIONS FELL PRIMARILY
10:23AM 5 INTO A COUPLE OF DIFFERENT CATEGORIES.

10:23AM 6 FIRST, THE DEFENDANT DECEIVED INVESTORS ABOUT THE
10:23AM 7 CAPABILITIES AND READINESS OF THERANOS'S MINI BLOOD ANALYZER.

10:24AM 8 THERANOS'S MINI BLOOD ANALYZER WENT BY A COUPLE OF
10:24AM 9 DIFFERENT NAMES AND A COUPLE OF DIFFERENT ITERATIONS THROUGHOUT
10:24AM 10 THE TIME PERIOD. SOME OF THOSE NAMES INCLUDE 3.0, 3.5, EDISON,
10:24AM 11 EDISON 3.5, 4.0, MINILAB. IT'S ALSO CALLED THE THERANOS SAMPLE
10:24AM 12 PROCESSING UNIT, OR TSPU. THOSE ARE JUST SOME OF THE NAMES
10:24AM 13 THAT YOU WILL HEAR THAT REFER TO THE MINI BLOOD ANALYZER.

10:24AM 14 AND THE DEFENDANT LED INVESTORS INTO BELIEVING THAT
10:24AM 15 THERANOS HAD BEEN USING ITS MINI BLOOD ANALYZER IN ITS LAB FOR
10:24AM 16 YEARS, AND THAT THE MINI BLOOD ANALYZER COULD ACCURATELY AND
10:24AM 17 RELIABLY RUN ALL, OR NEARLY ALL, OF THE BLOOD TESTS FROM A
10:24AM 18 FINGERSTICK ON PATIENTS IN A RECORD TIME AND AT A LOW COST.

10:25AM 19 HERE'S SOME OF THE CLAIMS IN THE PRESENTATION TO ONE OF
10:25AM 20 THE INVESTORS THAT YOU WILL HEAR FROM. THE DEFENDANT AND
10:25AM 21 HOLMES INVOKED THE IMAGE OF A THERANOS SYSTEM WITH MINI
10:25AM 22 ANALYZERS, LIKE THE TWO YOU SEE PICTURED HERE IN THE UPPER LEFT
10:25AM 23 CORNER.

10:25AM 24 THEY DESCRIBED CARTRIDGES THAT YOU WOULD INSERT INTO THE
10:25AM 25 MINI BLOOD ANALYZER SO IT COULD RUN TESTS.

10:25AM 1 THEY DESCRIBED CARTRIDGES ON WHICH YOU WOULD PUT A DROP OF
10:25AM 2 BLOOD DRAWN FROM A FINGER AND INSERT IT INTO THE ANALYZER.

10:25AM 3 THEY DESCRIBED MOBILE APPLICATIONS SO THAT YOU WOULD GET
10:25AM 4 YOUR RESULTS IN A MATTER OF HOURS.

10:25AM 5 AND THEY DESCRIBED BACK END ANALYTICS THAT SOME DAY WOULD
10:25AM 6 HELP PREDICT THE PROJECTION OF A DISEASE.

10:26AM 7 IN THIS INVESTOR POWERPOINT, THE DEFENDANT AND HOLMES
10:26AM 8 CLAIMED THAT WITH THIS SYSTEM, THIS MINI BLOOD ANALYZER,
10:26AM 9 THERANOS RUNS ANY TEST AVAILABLE IN CENTRAL LABORATORIES AND
10:26AM 10 PROCESSES ALL SAMPLE TYPES.

10:26AM 11 THEY CLAIMED THAT THERANOS PROVIDES THE HIGHEST LEVEL OF
10:26AM 12 OVERSIGHT, AUTOMIZATION, AND STANDARDIZATION IN OUR PRE- AND
10:26AM 13 POST-ANALYTIC PROCESSES ENSURING THE HIGHEST LEVELS OF ACCURACY
10:26AM 14 AND PRECISION.

10:26AM 15 ON ANOTHER SLIDE THEY CLAIMED THAT THERANOS PROVIDED THE
10:26AM 16 HIGHEST LEVELS OF ACCURACY, BRAGGING ABOUT A COEFFICIENT OF
10:26AM 17 VARIATION -- THAT'S A TERM THAT YOU'LL HEAR FROM SOME WITNESSES
10:26AM 18 IN THIS CASE -- OF LESS THAN 10 PERCENT, MEANING THEIR TESTS
10:27AM 19 WERE MORE ACCURATE THAN PLACES LIKE QUEST, AND LABCORP, AND
10:27AM 20 OTHER CENTRAL LABS.

10:27AM 21 ON ANOTHER SLIDE THEY CLAIMED THAT THERANOS PROVIDED A NEW
10:27AM 22 STANDARD IN QUALITY AND THAT THEIR ANALYZERS WERE DESIGNED TO
10:27AM 23 HELP MONITOR CHRONIC DISEASE STATES, PROVIDING ACCURACY AND
10:27AM 24 PRECISION OVER TIME THROUGH THE STANDARDIZATION OF OUR SYSTEMS.

10:27AM 25 BALWANI HAS CLAIMED TO INVESTORS THAT THERANOS WAS

10:27AM 1 VERTICALLY INTEGRATED, MEANING THAT THERANOS MADE EVERYTHING
10:27AM 2 THAT WENT INTO ITS TESTING DEVICES, MEANING THAT THERANOS WAS
10:27AM 3 NOT RELIANT ON COMPANIES LIKE SIEMENS OR MANUFACTURERS OF OTHER
10:27AM 4 DEVICES OR PARTS.

10:27AM 5 HE TOLD AN INVESTOR THAT THERANOS NEEDED NO NEW SCIENCE;
10:27AM 6 THAT THE SCIENCE BEHIND THERANOS WAS COMPLETE; AND THAT NO NEW
10:28AM 7 INVENTION WAS NEEDED.

10:28AM 8 THAT, AS YOU WILL SEE, WAS NOT TRUE.

10:28AM 9 IN TRUTH, AS YOU WILL HEAR FROM SOME OF THE INSIDERS AT
10:28AM 10 THERANOS, THE THERANOS MINI BLOOD ANALYZER, WHEN IT WAS
10:28AM 11 ACTUALLY USED BY THERANOS, WAS PLAGUED WITH ISSUES AND WAS
10:28AM 12 REPEATEDLY FAILING QUALITY CONTROL. I'LL TELL YOU IN A MINUTE
10:28AM 13 ABOUT QUALITY CONTROL AND WHAT THAT MEANS FOR A LAB LIKE
10:28AM 14 THERANOS.

10:28AM 15 INDEED, YOU WILL HEAR THAT THE THERANOS MINI BLOOD
10:28AM 16 ANALYZER WAS NEVER USED IN ITS CLINICAL LABORATORY FOR MORE
10:28AM 17 THAN 12 ASSAYS OR TESTS.

10:28AM 18 AND BY SEPTEMBER OF 2015, WHEN THERANOS STARTED TO COME
10:28AM 19 UNDER SCRUTINY BY REGULATORS, BY THE MEDIA AND INVESTORS,
10:28AM 20 THERANOS WAS NOT USING THE MINI BLOOD ANALYZER IN ITS LAB AT
10:29AM 21 ALL, NOT FOR ANY TEST.

10:29AM 22 THERANOS WAS USING ORDINARY THIRD PARTY MACHINES MADE BY
10:29AM 23 OTHERS, NOT THERANOS, TO DO THE VAST MAJORITY OF ITS BLOOD
10:29AM 24 TESTS, AND IT WAS DOING THEM BADLY.

10:29AM 25 THAT'S THE FIRST CATEGORY OF MISREPRESENTATIONS THAT

10:29AM 1 YOU'LL HEAR ABOUT IN THIS CASE.

10:29AM 2 SECOND, YOU WILL HEAR ABOUT HOW THE DEFENDANT AND
10:29AM 3 MS. HOLMES MISLED INVESTORS INTO BELIEVING THAT THERANOS HAD
10:29AM 4 STRONG AND GROWING PARTNERSHIPS WITH PHARMACEUTICAL COMPANIES
10:29AM 5 AND THE UNITED STATES MILITARY.

10:29AM 6 YOU WILL HEAR INVESTOR TESTIMONY THAT THE DEFENDANT AND
10:29AM 7 MS. HOLMES SAID THERANOS DID NOT NEED INVESTMENTS BECAUSE ITS
10:29AM 8 PHARMACEUTICAL AND MILITARY BUSINESS WAS SUSTAINING THE
10:29AM 9 COMPANY.

10:29AM 10 YOU WILL HEAR INVESTOR TESTIMONY THAT THE DEFENDANT AND
10:29AM 11 HOLMES SAID THERANOS'S MINI BLOOD ANALYZER WAS BEING USED ON
10:30AM 12 MILITARY HELICOPTERS AND HAD BEEN USED ON THE BATTLEFIELD.

10:30AM 13 YOU WILL HEAR INVESTOR TESTIMONY THAT THE DEFENDANT AND
10:30AM 14 HOLMES SAID THERANOS HAD HUNDREDS OF MILLIONS OF DOLLARS IN
10:30AM 15 REVENUE FROM THE DEPARTMENT OF DEFENSE AND THAT PHARMACEUTICAL
10:30AM 16 COMPANIES HAD COMPREHENSIVELY VALIDATED THERANOS'S TECHNOLOGY.

10:30AM 17 THE EVIDENCE WILL SHOW THAT THOSE WERE MISREPRESENTATIONS
10:30AM 18 AND HALF-TRUTHS. THERANOS DID HAVE RELATIONSHIPS WITH
10:30AM 19 PHARMACEUTICAL COMPANIES IN THE EARLY DAYS, BUT THOSE WERE
10:30AM 20 DYING OUT OR STARTING TO DIE OUT BY 2010 AND NEVER PRODUCED
10:30AM 21 SIGNIFICANT REVENUE FOR THE COMPANY.

10:30AM 22 AND THERANOS WAS TRYING TO GET THE MILITARY TO ACTUALLY
10:30AM 23 USE ITS MINI BLOOD ANALYZER, BUT THAT PROJECT NEVER WENT
10:30AM 24 ANYWHERE, IT NEVER GOT OFF THE GROUND, AND THE DEVICE WAS NEVER
10:31AM 25 USED ON THE BATTLEFIELD OR IN A MEDEVAC HELICOPTER.

1 LET ME NOW TELL YOU ABOUT A THIRD CATEGORY OF
2 MISREPRESENTATIONS THAT YOU'LL HEAR ABOUT IN THIS CASE. THE
3 DEFENDANT MISLED POTENTIAL INVESTORS WITH FALSE AND MISLEADING
4 INFORMATION ABOUT THERANOS'S FINANCIAL CONDITION AND
5 PROJECTIONS.

6 YOU WILL HEAR FROM THERANOS'S CONTROLLER, THE FINANCE
7 EMPLOYEE WHO WORKED CLOSELY WITH MR. BALWANI AND MANAGED THE
8 COMPANY'S BOOKS. SHE WILL TELL YOU THAT THERANOS HAD
9 APPROXIMATELY \$500,000 OF REVENUE IN 2011; THAT IT HAD ZERO IN
10 2012; THAT IT HAD ZERO REVENUE IN 2013; THAT IT HAD \$150,000 IN
11 REVENUE IN 2014; AND LESS THAN 2 MILLION IN 2015.

12 THE DEFENDANT, HOWEVER, WAS TELLING INVESTORS THAT
13 THERANOS COULD PERFORM ALL OF THE BLOOD TESTS AT A FRACTION OF
14 THE COST OF ITS MINI BLOOD ANALYZER, AND HE WAS TELLING THEM AS
15 LATE -- AS OF OCTOBER OF 2014 THAT THERANOS WOULD HAVE
16 \$140 MILLION IN REVENUE BY THE END OF 2014, INCLUDING
17 \$40 MILLION FROM PHARMACEUTICAL COMPANIES THAT WERE NO LONGER
18 USING THERANOS'S SERVICES.

19 YOU WILL SEE THAT HE TOLD INVESTORS BY THE END OF 2015
20 THAT THERANOS WOULD HAVE NEARLY A BILLION DOLLARS IN REVENUE.
21 IT HAD LESS THAN 2 MILLION BY THE END OF 2015.

22 I'VE PUT ON THE SCREEN A DOCUMENT I BELIEVE THAT WILL COME
23 INTO EVIDENCE. THIS IS ONE OF THE PROJECTIONS AND FINANCIAL
24 STATEMENTS THAT WERE PROVIDED TO ONE OF THE INVESTORS. YOU
25 WILL SEE THAT THERE'S A LINE, WHICH WE'VE HIGHLIGHTED, FOR

10:33AM 1 TOTAL REVENUE IN 2014 AND FOR PROJECTED REVENUE IN 2015. IT
10:33AM 2 INCLUDES A LINE FOR PHARMACEUTICAL REVENUE OF ABOUT
10:33AM 3 \$40 MILLION. YOU WILL HEAR THAT THERANOS HAD NONE AT THE TIME,
10:33AM 4 AND IT HAD NONE BY THE END OF THE YEAR.

10:33AM 5 YOU WILL ALSO HEAR TESTIMONY FROM THERANOS'S CONTROLLER
10:33AM 6 WHO WILL TELL YOU THAT SHE HAS NO IDEA WHERE THESE NUMBERS COME
10:33AM 7 FROM, AND IT WAS NO RELATION TO WHAT THERANOS ACTUALLY
10:33AM 8 ACHIEVED.

10:33AM 9 YOU WILL SEE THAT THESE ARE NOT CLOSE MISSES THAT THE
10:33AM 10 DEFENDANT WAS GIVING TO INVESTORS.

10:33AM 11 ANOTHER CATEGORY OF MISREPRESENTATIONS THAT YOU WILL HEAR
10:33AM 12 ABOUT IS THAT THE DEFENDANT LIED TO INVESTORS ABOUT THE STATUS
10:34AM 13 OF THE WALGREENS ROLLOUT. REMEMBER, THAT THERANOS ANNOUNCED IN
10:34AM 14 SEPTEMBER OF 2013 THAT ITS BLOOD TESTING SERVICES WERE GOING TO
10:34AM 15 BE AVAILABLE IN WALGREENS.

10:34AM 16 WALGREENS BELIEVED THAT THERANOS WOULD BE DRAWING BLOOD
10:34AM 17 FROM A FINGERSTICK AND USING ITS MINI BLOOD ANALYZER TO RUN THE
10:34AM 18 TEST.

10:34AM 19 BUT THERANOS NEVER USED THAT MINI BLOOD ANALYZER FOR MORE
10:34AM 20 THAN 12 TYPES OF BLOOD TESTS. AND UNBEKNOWNST TO WALGREENS
10:34AM 21 OFFICIALS, THERANOS WAS SECRETLY USING THE BIG CLUNKY THIRD
10:34AM 22 PARTY MACHINES THAT I SHOWED YOU TO DO THE VAST MAJORITY OF ITS
10:34AM 23 TESTING. AS A RESULT, WHEN PATIENTS CAME INTO THE WALGREENS
10:34AM 24 STORES, THEY HAD TO GET THEIR BLOOD DRAWN FROM THE VEIN, NOT
10:34AM 25 FROM A FINGER.

10:34AM 1 WALGREENS, YOU WILL LEARN, WAS SHOCKED BY THE HIGH
10:34AM 2 PERCENTAGE OF VEIN DRAWS THAT THERANOS WAS PERFORMING, AND BY
10:35AM 3 THE END OF AUGUST OF 2014 WAS DOUBTING THERANOS'S ABILITY TO DO
10:35AM 4 WHAT THERANOS SAID IT COULD DO, WHAT THE DEFENDANT AND HOLMES
10:35AM 5 SAID THAT IT COULD DO.

10:35AM 6 IN AUGUST OF 2014 WALGREENS WAS TELLING THE DEFENDANT THAT
10:35AM 7 THERE WOULD BE NO FURTHER ROLLOUT BEYOND THE 40 STORES THAT IT
10:35AM 8 HAD ALREADY OPENED FOR TESTING UNTIL THERANOS WAS ABLE TO DO
10:35AM 9 MORE OF ITS TESTS FROM A FINGER INSTEAD OF THE VEIN.

10:35AM 10 AND DESPITE THE FACT THAT THE WALGREENS ROLLOUT WAS
10:35AM 11 STALLING BECAUSE THERANOS HAD TO RELY ON VEIN DRAWS, THE
10:35AM 12 DEFENDANT TOLD INVESTORS THAT THE WALGREENS RELATIONSHIP WAS
10:35AM 13 THRIVING AND EXPANDING, AND BY THE END OF 2015 THERE WOULD BE
10:35AM 14 HUNDREDS OF WALGREENS STORES USING THERANOS'S DEVICES.

10:35AM 15 I EXPECT YOU WILL HEAR FROM A WITNESS FROM WALGREENS WHO
10:36AM 16 WILL EXPLAIN THAT BALWANI WAS HIS PRIMARILY CONTACT BETWEEN
10:36AM 17 THERANOS AND WALGREENS. YOU WILL HEAR THE WALGREENS SURPRISE
10:36AM 18 AT THE HIGH NUMBER OF VEIN DRAWS THAT WERE OCCURRING AT
10:36AM 19 THERANOS, AND I EXPECT THAT YOU WILL SEE EMAILS LIKE THE ONE
10:36AM 20 THAT I HAVE PUT ON THE SCREEN, AND OTHER EVIDENCE LIKE THIS,
10:36AM 21 WHERE WALGREENS IS TELLING BALWANI FURTHER EXPANSION WILL BE
10:36AM 22 DIFFICULT UNLESS THERANOS CAN GET ITS VEIN DRAW PERCENTAGE DOWN
10:36AM 23 FROM APPROXIMATELY 40 PERCENT TO 10 PERCENT, OR LOWER, AS
10:36AM 24 WALGREENS HAD EXPECTED ALL ALONG.

10:36AM 25 THE EVIDENCE WILL SHOW THAT THE DEFENDANT MISLED INVESTORS

10:36AM 1 ABOUT THE PACE AND STATUS OF THE WALGREENS ROLLOUT IN 2014.

10:37AM 2 THOSE ARE SOME OF THE CATEGORIES OF MISREPRESENTATIONS
10:37AM 3 THAT YOU WILL HEAR ABOUT IN THIS CASE.

10:37AM 4 YOU WILL SEE THAT SOME OF THESE MISREPRESENTATIONS WERE
10:37AM 5 MADE DIRECTLY TO INVESTORS IN ONE-ON-ONE MEETINGS AND IN
10:37AM 6 POWERPOINTS, AND YOU WILL ALSO SEE THAT SOME OF THE
10:37AM 7 MISREPRESENTATIONS WERE MADE TO REPORTERS. ONE REPORTER IN
10:37AM 8 PARTICULAR IS NAMED ROGER PARLOFF OF "FORTUNE" MAGAZINE WHO
10:37AM 9 WROTE AN ARTICLE IN JUNE OF 2014 TITLED "THIS CEO IS OUT FOR
10:37AM 10 BLOOD." THIS WAS PUBLISHED IN JUNE OF 2014, APPROXIMATELY
10:37AM 11 EIGHT OR NINE MONTHS AFTER THE PRESS RELEASE ANNOUNCING THE
10:37AM 12 WALGREENS PARTNERSHIP.

10:37AM 13 AFTER INTERVIEWING HOLMES, PARLOFF REPORTED, QUOTE,
10:37AM 14 "IMPORTANTLY, IT'S NOT JUST THE BLOOD DRAWS THAT ARE TINY.
10:37AM 15 IT'S ALSO THE ANALYTICAL SYSTEMS THERANOS USES TO PERFORM THE
10:38AM 16 TESTS. THEY TAKE UP A SMALL FRACTION OF THE FOOTPRINT REQUIRED
10:38AM 17 BY THE CONVENTIONAL LAB TODAY."

10:38AM 18 THAT WAS FALSE.

10:38AM 19 PARLOFF ALSO REPORTED, QUOTE, "THERANOS, WHICH DOES NOT
10:38AM 20 BUY ANY ANALYZERS FROM THIRD PARTIES, IS THEREFORE IN A UNIQUE
10:38AM 21 POSITION."

10:38AM 22 THAT, TOO, WAS FALSE.

10:38AM 23 THERANOS USED THE PARLOFF ARTICLE THAT YOU SEE HERE TO
10:38AM 24 RECRUIT FURTHER INVESTMENTS AND TO DECEIVE INVESTORS, AND IT
10:38AM 25 WAS AN IMPORTANT WAY IN WHICH THE DEFENDANT AND HOLMES EXECUTED

10:38AM 1 THEIR FRAUD SCHEME.

10:38AM 2 THE DEFENDANT'S FALSE AND MISLEADING STATEMENTS WERE
10:38AM 3 ENORMOUSLY SUCCESSFUL. BETWEEN SEPTEMBER OF 2013 WHEN THERANOS
10:38AM 4 ISSUED THE FALSE AND MISLEADING PRESS RELEASE ABOUT THE
10:38AM 5 WALGREENS LAUNCH AND THE END OF 2015, BALWANI AND HOLMES RAISED
10:38AM 6 HUNDREDS OF MILLIONS OF DOLLARS FROM INVESTORS.

10:39AM 7 AND THE FRAUD SCHEME MADE BALWANI AND HOLMES BILLIONAIRES.

10:39AM 8 BALWANI OWNED 28 MILLION SHARES IN THERANOS, WHICH AT THE
10:39AM 9 HEIGHT OF THE SCHEME EQUATED TO ABOUT HALF A BILLION DOLLARS.

10:39AM 10 HIS GIRLFRIEND, ELIZABETH HOLMES, OWNED EVEN MORE. SHE
10:39AM 11 OWNED 250 MILLION SHARES, WHICH AT THE HEIGHT OF THE SCHEME
10:39AM 12 EQUATED TO ABOUT \$4.5 BILLION.

10:39AM 13 THE SCHEME ALSO BROUGHT THEM FAME AND ADORATION IN
10:39AM 14 COMPARISON TO COMPANIES LIKE MICROSOFT, FACEBOOK, AND OTHER
10:39AM 15 UNICORN TECHNOLOGY COMPANIES.

10:39AM 16 BUT THE EVIDENCE WILL SHOW THAT THE DEFENDANT AND HOLMES
10:40AM 17 KNEW THE ROSY FALSEHOODS THAT THEY WERE TELLING INVESTORS WERE
10:40AM 18 CONTRARY TO THE REALITY WITHIN THERANOS.

10:40AM 19 YOU WILL SEE THIS IN PART THROUGH THE TESTIMONY OF
10:40AM 20 MULTIPLE INSIDERS AT THERANOS WHO KNEW WHAT ITS MINI BLOOD
10:40AM 21 ANALYZER COULD DO, OR IN TRUTH COULDN'T DO, WHO KNEW WHAT WAS
10:40AM 22 REALLY GOING ON INSIDE THERANOS, AND WHO WERE TROUBLED BY WHAT
10:40AM 23 WAS GOING ON.

10:40AM 24 I ANTICIPATE THAT YOU WILL HEAR FROM AN INDIVIDUAL NAMED
10:40AM 25 DR. ADAM ROSENDORFF WHO WAS THERANOS'S LABORATORY DIRECTOR IN

10:40AM 1 2013 AT THE TIME OF THE WALGREENS LAUNCH AND THROUGHOUT MOST OF
10:40AM 2 2014. YOU CAN SEE DR. ROSENDORFF PICTURED HERE AT THE BOTTOM
10:40AM 3 OF THE SCREEN, SECOND FROM THE LEFT.

10:40AM 4 DR. ROSENDORFF CAME TO THERANOS FROM A CHILDREN'S HOSPITAL
10:40AM 5 AT THE UNIVERSITY OF PITTSBURGH. AND HE WILL TELL YOU THAT HE
10:41AM 6 WAS INITIALLY EXCITED ABOUT THE PROSPECT OF THERANOS, ABOUT THE
10:41AM 7 IDEA OF A MACHINE, A MINI BLOOD ANALYZER, THAT COULD VIRTUALLY
10:41AM 8 DO ANY TEST FROM A DROP OF BLOOD.

10:41AM 9 BUT THAT CHANGED. HE WILL TELL YOU IN SEPTEMBER OF 2013
10:41AM 10 HE URGED THERANOS TO DELAY ITS COMMERCIAL LAUNCH BECAUSE THEY
10:41AM 11 WEREN'T READY.

10:41AM 12 HE WILL TELL YOU THAT THROUGHOUT 2014 HE WAS INCREASINGLY
10:41AM 13 DEVELOPING CONCERNS ABOUT THE ACCURACY AND RELIABILITY OF
10:41AM 14 THERANOS'S BLOOD TESTS.

10:41AM 15 YOU WILL HEAR THAT HE WAS REPEATEDLY OVERRULED IN THE LAB
10:41AM 16 BY SENIOR MANAGEMENT AT THERANOS, AND HE WILL TELL YOU THAT HE
10:41AM 17 FELT PRESSURED TO VOUCH FOR TESTS THAT HE DID NOT BELIEVE IN.

10:41AM 18 DR. ROSENDORFF ULTIMATELY LEFT THERANOS IN LATE 2014 WHEN
10:42AM 19 HIS CONCERNS WENT UNADDRESSED, AND HE WAS SO WORRIED ABOUT WHAT
10:42AM 20 WAS HAPPENING IN THERANOS THAT HE STARTED TO SHARE HIS CONCERNS
10:42AM 21 WITH A REPORTER.

10:42AM 22 I ANTICIPATE THAT YOU WILL ALSO HEAR FROM
10:42AM 23 DR. MARK PANDORI, WHO IS ONE OF THE MOST SENIOR OFFICERS IN
10:42AM 24 THERANOS'S LABORATORY FROM LATE 2013 THROUGH MAY OF 2014. YOU
10:42AM 25 CAN SEE DR. PANDORI PICTURED ON THE SCREEN HERE TO THE LEFT OF

10:42AM 1 DR. ROSENDORFF.

10:42AM 2 DR. PANDORI CAME TO THERANOS AFTER WORKING AT THE
10:42AM 3 SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH, AND HE WENT ON TO
10:42AM 4 WORK AT THE ALAMEDA COUNTY OF PUBLIC HEALTH AND THE UNIVERSITY
10:42AM 5 OF NEVADA.

10:42AM 6 HE WILL TELL YOU ABOUT THE PROBLEMS THAT HE OBSERVED IN
10:42AM 7 THE THERANOS LAB. YOU WILL HEAR ABOUT HOW THOSE CONCERNS WERE
10:43AM 8 ESCALATED TO THE DEFENDANT, MR. BALWANI.

10:43AM 9 DR. PANDORI WILL ALSO TELL YOU THAT HE WAS TROUBLED TO SEE
10:43AM 10 SENIOR MANAGEMENT AT THERANOS PUTTING OUT INACCURATE
10:43AM 11 INFORMATION ABOUT THE COMPANY. HE DID NOT THINK THAT THE
10:43AM 12 PUBLIC PERCEPTION OF THERANOS MATCHED THE REALITY OF WHAT HE
10:43AM 13 WAS SEEING ON THE INSIDE.

10:43AM 14 AND WHEN HE REPORTED THIS DIRECTLY TO MR. BALWANI, HE WAS
10:43AM 15 GIVEN THE BACK OF THE HAND. AND HE RESIGNED THAT DAY.

10:43AM 16 YOU WILL ALSO HEAR FROM A WOMAN NAMED ERIKA CHEUNG WHO
10:43AM 17 WORKED INSIDE OF THERANOS'S CLINICAL LABORATORY AND OBSERVED
10:43AM 18 FIRSTHAND HOW THE MINI BLOOD ANALYZER WAS WORKING, AND IN TRUTH
10:43AM 19 NOT WORKING. SHE'LL TELL YOU THAT THE MINI BLOOD ANALYZER WAS
10:43AM 20 REPEATEDLY FAILING WHAT IS CALLED QUALITY CONTROL.

10:44AM 21 YOU WILL LEARN IN THIS CASE THAT LABORATORIES LIKE
10:44AM 22 THERANOS REPEATEDLY RUN QUALITY CONTROL EACH DAY ON A REGULAR
10:44AM 23 BASIS TO MAKE SURE THAT THEIR DEVICES ARE WORKING THE WAY THAT
10:44AM 24 THEY SHOULD BE. IT'S LIKE CHECKING THE SPEED ON A RADAR GUN
10:44AM 25 BEFORE A BASEBALL GAME OR CALIBRATING A SCALE BEFORE YOU

10:44AM 1 ACTUALLY USE IT.

10:44AM 2 AND MS. CHEUNG WILL TELL YOU THAT THE THERANOS BLOOD
10:44AM 3 ANALYZER WAS REPEATEDLY FAILING MUCH MORE SO THAN OTHER
10:44AM 4 DEVICES.

10:44AM 5 SHE WILL TELL YOU THAT THERANOS TURNED A BLIND EYE WHEN
10:44AM 6 SHE REPORTED HER CONCERNS, AND SHE WILL TELL YOU THAT WHAT SHE
10:44AM 7 SAW WAS SO CONCERNING THAT SHE ULTIMATELY DECIDED TO BLOW THE
10:44AM 8 WHISTLE AND REPORT HER CONCERNS TO THE CENTERS FOR MEDICARE AND
10:44AM 9 MEDICAID SERVICES, OR CMS.

10:44AM 10 AT THIS POINT I SHOULD TELL YOU A LITTLE BIT ABOUT CMS.

10:45AM 11 CMS IS A FEDERAL AGENCY THAT REGULATES LABORATORIES.

10:45AM 12 REMEMBER HOW I SAID THE FDA IS RESPONSIBLE FOR MEDICAL
10:45AM 13 DEVICES?

10:45AM 14 CMS REGULATES LABORATORIES. IF YOU WANT TO RUN A
10:45AM 15 LABORATORY WHERE YOU DO PATIENT TESTING, YOU NEED TO HAVE A
10:45AM 16 LICENSE FROM CMS, AND YOU NEED TO SUBJECT YOURSELF TO
10:45AM 17 INSPECTIONS BY CMS FROM TIME TO TIME.

10:45AM 18 YOU WILL SEE THAT THERANOS OPENED THE LAB IN 2011. IT WAS
10:45AM 19 USING ORDINARY MACHINES MADE BY OTHERS TO DO BLOOD TESTS DRAWN
10:45AM 20 FROM A VEIN, AND BEGINNING IN 2013 IT STARTED TO USE THE MINI
10:45AM 21 BLOOD ANALYZER, BUT IT ONLY USED IT FOR ONLY 12 TESTS.

10:45AM 22 AND YOU WILL LEARN THAT CMS CAME IN TO DO AN INSPECTION IN
10:45AM 23 SEPTEMBER OF 2015 AND SAW FIRSTHAND THE ISSUES THAT
10:45AM 24 DR. ROSENDORFF WAS REPORTING, THAT DR. PANDORI WAS REPORTING,
10:45AM 25 AND THAT MS. CHEUNG WAS REPORTING.

1 THE EVIDENCE WILL SHOW THAT WHILE CHEUNG AND PANDORI AND
2 ROSENDORFF WERE RAISING ISSUES, THERANOS WAS PRODUCING
3 DANGEROUSLY INACCURATE RESULTS TO PATIENTS WHO BOUGHT
4 THERANOS'S BLOOD TESTS THINKING THAT THEY WERE ACCURATE AND
5 RELIABLE.

6 YOU WILL HEAR FROM SOME OF THE PATIENTS WHO GOT THERANOS
7 BLOOD TESTS IN THIS CASE.

8 YOU WILL HEAR FROM A PATIENT WHO THOUGHT -- WHO BOUGHT A
9 THERANOS TEST BELIEVING IT WOULD BE ACCURATE AND RELIABLE AND
10 WAS WRONGLY TOLD THAT HE HAD RESULTS CONSISTENT WITH PROSTATE
11 CANCER.

12 YOU WILL HEAR ABOUT WOMEN WHO RECEIVED THE WRONG
13 INFORMATION ABOUT WHETHER THEY WERE OR WERE NOT PREGNANT.

14 YOU WILL HEAR THAT THE DEFENDANT WAS WELL AWARE OF THE
15 PROBLEMS WITH THERANOS'S TESTS AND THE WRONG RESULTS THAT
16 PATIENTS WERE GETTING.

17 YOU WILL SEE EMAIL AFTER EMAIL WHERE ISSUES ARE BROUGHT TO
18 HIS ATTENTION BECAUSE THE DEFENDANT WAS THE ONE OVERSEEING THE
19 LAB.

20 BUT BALWANI CONTINUED TO PROVIDE THESE TESTS TO
21 UNSUSPECTED PATIENTS FOR MONTHS AND SOMETIMES YEARS.

22 IN ADDITION, YOU WILL SEE THE PRIVATE MESSAGES BETWEEN THE
23 DEFENDANT AND ELIZABETH HOLMES. AS I MENTIONED, THE TWO WERE
24 CEO AND COO, AND THEY WORKED TOGETHER THE WAY YOU WOULD EXPECT
25 THE TWO TOP OFFICERS WITHIN A SMALL COMPANY TO WORK. AND THEY

10:47AM 1 WORKED IN THE SAME WAY YOU WOULD EXPECT ROMANTIC PARTNERS TO
10:47AM 2 SHARE INFORMATION.

10:47AM 3 YOU WILL SEE HOW REGULARLY AND HOW INTIMATELY THEY
10:47AM 4 CONNECTED AND COMMUNICATED, AND YOU WILL SEE HOW THEY CANDIDLY
10:47AM 5 EXPLAINED TO EACH OTHER HOW BAD THINGS WERE INSIDE THERANOS AT
10:47AM 6 THE TIME THAT THEY WERE TOUTING THERANOS AS A REVOLUTION IN
10:48AM 7 HEALTH CARE.

10:48AM 8 YOU WILL SEE THE DEFENDANT TOLD ELIZABETH HOLMES
10:48AM 9 THERANOS'S LAB WAS A DISASTER ZONE WITH AN EXPLETIVE I CAN'T
10:48AM 10 REPEAT HERE IN COURT.

10:48AM 11 YOU WILL SEE HOW THEY URGED EACH OTHER TO PLAY DURING THE
10:48AM 12 CMS INSPECTION WHEN THINGS APPEARED TO BE GOING BADLY.

10:48AM 13 YOU WILL SEE THAT THE DEFENDANT TOLD MS. HOLMES THAT
10:48AM 14 THERANOS WOULD BE WITH HYBRID SOLUTIONS, SOMETHING OTHER THAN
10:48AM 15 THE MINI BLOOD ANALYZER, FOR A LONG TIME TO COME.

10:48AM 16 AND YOU WILL SEE THAT THE DEFENDANT BRAGGED TO MS. HOLMES
10:48AM 17 ABOUT THERANOS'S ABILITY TO RUN CIRCLES AROUND THE REGULATORS.

10:48AM 18 BY MAKING THESE FALSE AND MISLEADING REPRESENTATIONS TO
10:48AM 19 THERANOS INVESTORS AND THERANOS PATIENTS, THE DEFENDANT AND
10:49AM 20 ELIZABETH HOLMES TOGETHER BECAME BILLIONAIRES.

10:49AM 21 BUT IN OCTOBER OF 2015, THAT FACADE BEGAN TO CRUMBLE.

10:49AM 22 AROUND THAT TIME AFTER SOME SKEPTICAL REPORTING ABOUT
10:49AM 23 THERANOS, REMEMBER I TOLD YOU DR. ROSENDORFF AND OTHERS WENT TO
10:49AM 24 A NEWS REPORTER, INVESTORS AND OTHERS STARTED TO ASK DIFFICULT
10:49AM 25 QUESTIONS OF MS. HOLMES AND MR. BALWANI:

10:49AM 1 HOW MANY TESTS CAN YOU REALLY DO ON YOUR MINI BLOOD
10:49AM 2 ANALYZER?

10:49AM 3 HOW MUCH REVENUE DO YOU REALLY HAVE?

10:49AM 4 ARE YOUR TESTS AS ACCURATE AS THEY SAY THEY ARE?

10:49AM 5 THOSE ARE THE QUESTIONS INVESTORS AND WALGREENS STARTED
10:49AM 6 ASKING IN OCTOBER OF 2015, AND YOU'LL SEE HOW THE DEFENDANT AND
10:49AM 7 HOLMES SCRAMBLED TO TRY TO COME UP WITH EXPLANATIONS AFTER THE
10:49AM 8 FACT TO WALGREENS AND INVESTORS.

10:49AM 9 AND YOU WILL SEE THAT ONLY THROUGH THE MEDIA DID INVESTORS
10:50AM 10 AND PARTNERS LEARN THAT THE DEFENDANT AND MS. HOLMES WERE
10:50AM 11 SECRETLY ROMANTIC PARTNERS ALL THE TIME, THE ENTIRE TIME OF THE
10:50AM 12 SCHEME.

10:50AM 13 AND I EXPECT YOU WILL HEAR THAT INVESTORS CONSIDER THAT AN
10:50AM 14 IMPORTANT FACT GIVEN THE ROLE THAT A CEO AND A COO PLAY AT A
10:50AM 15 SMALL COMPANY.

10:50AM 16 THERANOS WAS NEVER ABLE TO ADEQUATELY RESPOND TO CMS AFTER
10:50AM 17 THE INSPECTION.

10:50AM 18 BALWANI LEFT THERANOS IN THE FIRST HALF OF 2016 AND
10:50AM 19 THERANOS INVESTORS SUFFERED HUNDREDS OF MILLIONS OF DOLLARS IN
10:50AM 20 LOSSES.

10:50AM 21 THE FRAUD THAT I HAVE JUST DESCRIBED TO YOU GIVES RISE TO
10:50AM 22 A NUMBER OF THE DIFFERENT CHARGES WHICH THE COURT DESCRIBED IN
10:50AM 23 THE PRELIMINARY INSTRUCTIONS.

10:50AM 24 THE FIRST ONE IS WIRE FRAUD. BALWANI USED INTERSTATE
10:51AM 25 WIRES TO EXECUTE A SCHEME TO DEFRAUD THERANOS INVESTORS AND

10:51AM 1

THERANOS PATIENTS.

10:51AM 2

IT ALSO GIVES RISE TO CONSPIRACY. BALWANI ENTERED INTO AN

10:51AM 3

AGREEMENT, A CRIMINAL PARTNERSHIP WITH HIS GIRLFRIEND,

10:51AM 4

ELIZABETH HOLMES, TO COMMIT THE CRIME OF WIRE FRAUD AGAINST

10:51AM 5

THERANOS INVESTORS.

10:51AM 6

AND BALWANI CONSPIRED TO COMMIT WIRE FRAUD AND TO DECEIVE

10:51AM 7

AND CHEAT PATIENTS OUT OF MONEY, TO UNKNOWINGLY PAY OUT OF

10:51AM 8

POCKET FOR FAULTY TESTS.

10:51AM 9

NOW, IN THE LAST FEW MINUTES I WANT TO GIVE YOU A BRIEF

10:51AM 10

OVERVIEW OF THERANOS AND THE DIFFERENT TYPES OF WITNESSES THAT

10:51AM 11

YOU WILL HEAR FROM IN THIS CASE WHO WILL PROVE TO YOU THAT

10:51AM 12

RAMESH BALWANI, THE DEFENDANT, DEFRAUDED INVESTORS AND

10:51AM 13

DEFRAUDED PATIENTS.

10:51AM 14

LET ME START WITH THERANOS.

10:52AM 15

AS I MENTIONED, ELIZABETH HOLMES FORMED THERANOS IN 2003.

10:52AM 16

SHE WAS ITS FOUNDER AND ITS CHIEF EXECUTIVE OFFICER AND THE

10:52AM 17

CHAIRMAN OF ITS BOARD OF DIRECTORS. AND SHE OWNED A MAJORITY

10:52AM 18

OF THE VOTING RIGHTS AND WAS THE LARGEST SHAREHOLDER IN THE

10:52AM 19

COMPANY.

10:52AM 20

FROM 2009 THROUGH 2016, BALWANI WAS THE CHIEF OPERATING

10:52AM 21

OFFICER, THE COO, AND THE PRESIDENT. HE WAS ALSO ON THE BOARD.

10:52AM 22

AND AS I MENTIONED, HE OWNED A SIGNIFICANT AMOUNT OF STOCK.

10:52AM 23

THE EVIDENCE WILL SHOW THAT THEY RAN THE COMPANY TOGETHER.

10:52AM 24

THE DEFENDANT AND HOLMES CONTROLLED THERANOS AS EQUALS AND

10:52AM 25

MADE SIGNIFICANT DECISIONS IN CONSULTATION WITH EACH OTHER AS

PARTNERS.

YOU WILL SEE HOW THEY REGULARLY TALKED TO EACH OTHER. YOU WILL SEE HOW CLOSELY THEY COLLABORATED, AND YOU WILL SEE HOW THEY WERE PARTNERS IN EVERYTHING, INCLUDING THEIR CRIMES.

YOU WILL SEE THAT MR. BALWANI WAS VIEWED AS THE OPERATIONS LEADER. THAT HE HAD RESPONSIBILITY OVER THE LAB, OVER MANUFACTURING, OVER THE WALGREENS PARTNERSHIP, OVER THE COMPANY'S FINANCES, BUT THEY STILL SHARED RESPONSIBILITY THROUGHOUT THE COMPANY.

NOW, I TALKED A LOT ABOUT MS. HOLMES AND MR. BALWANI WHO WERE THE LEADERS OF THIS COMPANY, THE ONLY TWO REAL LEADERS OF THIS COMPANY, BUT I DON'T WANT TO GIVE YOU THE IMPRESSION THAT THERANOS WAS JUST A SHELL COMPANY. IT WAS A REAL COMPANY. THEY HAD EMPLOYEES. THEY HAD DOCTORS. THEY HAD OTHER PROFESSIONALS.

BUT THE EVIDENCE WILL SHOW THAT IT WAS THE DEFENDANT AND HOLMES WHO MADE ALL OF THE SIGNIFICANT DECISIONS ON BEHALF OF THERANOS.

I'VE PUT BACK ON THE SCREEN HERE SOME OF THE OTHER INSIDERS WITHIN THERANOS. I TOLD YOU ABOUT DR. ROSENDORFF, I TOLD YOU ABOUT DR. PANDORI, AND I TOLD YOU ABOUT ERIKA CHEUNG.

I WANT TO EXPLAIN THE OTHER INDIVIDUAL ON THE SCREEN, DR. SUNIL DHAWAN.

BUT FIRST I WANT TO TALK ABOUT ONE OF THE ACRONYMS ON THE SCREEN. YOU SEE THE TERM CLIA, WHERE IT SAYS CALIFORNIA CLIA

10:54AM 1 LABORATORY EMPLOYEES. YOU'RE GOING TO HEAR A LITTLE BIT ABOUT
10:54AM 2 THIS ACRONYM, CLIA. IT STANDS FOR CLINICAL LABORATORY
10:54AM 3 IMPROVEMENT AMENDMENTS ACT. I DON'T EXPECT YOU TO REMEMBER
10:54AM 4 THAT. IT'S NOT IMPORTANT.

10:54AM 5 BUT WHAT IS IMPORTANT IS THAT IF YOU WANT TO BE IN THE LAB
10:54AM 6 TESTING BUSINESS, IF YOU WANT TO GIVE RESULTS TO PATIENTS, YOU
10:54AM 7 NEED TO BE LICENSED WITH CMS AND THE STATE, AND IT'S
10:54AM 8 ESSENTIALLY HOW YOU BRING YOUR BLOOD TESTING SERVICES TO THE
10:54AM 9 PUBLIC FOR USE ON PATIENTS.

10:54AM 10 THE CLIA LAB IS WHERE YOU DELIVER ON YOUR PROMISES, WHERE
10:55AM 11 YOU GIVE YOUR RESULTS TO PATIENTS.

10:55AM 12 THERE'S R&D, WHERE YOU'RE MAKING SOMETHING, YOU'RE
10:55AM 13 DEVELOPING SOMETHING, YOU HOPE IT WORKS.

10:55AM 14 BUT WHEN YOU WANT TO DELIVER SOMETHING TO A PATIENT, YOU
10:55AM 15 NEED THAT LICENSE. YOU NEED TO HAVE A CLIA CERTIFICATE.

10:55AM 16 I ALSO TALKED EARLIER ABOUT A TERM CALLED "ASSAYS."
10:55AM 17 YOU'RE GOING TO HEAR SOME SCIENCE IN THIS CASE. ASSAYS IS A
10:55AM 18 FANCY NAME FOR BLOOD TEST. IT'S A FANCY NAME FOR A CHEMICAL
10:55AM 19 REACTION. THIS GENERATES A RESULT THAT YOU CAN ANALYZE.
10:55AM 20 THAT'S ANOTHER TERM THAT YOU'RE GOING TO HEAR THROUGHOUT THIS
10:55AM 21 TRIAL.

10:55AM 22 AND WITH THOSE ACRONYMS I WANT TO TELL YOU ABOUT
10:55AM 23 DR. DHAWAN, WHO I ALSO EXPECT YOU WILL HEAR FROM.

10:55AM 24 REMEMBER, I TOLD YOU THAT DR. ROSENDORFF LEFT THE COMPANY
10:55AM 25 AT THE END OF 2014 WHEN HIS CONCERNS WERE NOT BEING ADDRESSED.

1 AT THE TIME THAT THE THERANOS NEW BLOOD ANALYZER WAS BEING
2 USED FOR ONLY 12 TESTS, BALWANI WAS DESCRIBING HIS OWN LAB AS A
3 DISASTER ZONE.

4 AND WITH THE LAB FLOUNDERING, MR. BALWANI CHOSE TO BRING
5 IN HIS DERMATOLOGIST, DR. DHAWAN. A DERMATOLOGIST, AS SOME OF
6 YOU MAY KNOW, IS SOMEONE WHO SPECIALIZES IN SKIN CONDITIONS.

7 THE DEFENDANT PUT DR. DHAWAN IN CHARGE OF ASSESSING
8 WHETHER WOMEN WERE PREGNANT, ABOUT WHETHER INDIVIDUALS HAD
9 CANCER, AND WHETHER THEY HAD OTHER DISEASES.

10 DR. DHAWAN HAD NEVER RUN A LAB OUTSIDE OF HIS DERMATOLOGY
11 PRACTICE. THE ONLY CONNECTION TO THERANOS HE HAD WAS HE WAS
12 MR. BALWANI'S DERMATOLOGIST.

13 HE HAD NEVER SEEN OR USED THE THERANOS MINI BLOOD
14 ANALYZER, AND HE HAD NEVER SEEN OR USED THE FINGERSTICK TEST
15 THAT THERANOS WAS USING.

16 AND HE WILL TELL YOU THAT HE DID NO MEANINGFUL WORK AT
17 THERANOS BETWEEN THE TIME HE WAS BROUGHT ON AT THE END OF 2014
18 AND SEPTEMBER OF 2015 WHEN THE CMS INSPECTORS STARTED ASKING
19 HARD QUESTIONS ABOUT WHAT WAS GOING ON IN THE LABORATORY.

20 THESE ARE SOME OF THE INSIDERS WITHIN THE COMPANY THAT I
21 EXPECT YOU WILL HEAR FROM.

22 IN ADDITION, YOU WILL HEAR FROM SOME OF THE OUTSIDERS THAT
23 DEALT WITH THERANOS AND WHOSE GOOD WILL THE DEFENDANT
24 EXPLOITED.

25 I EXPECT THAT YOU WILL HEAR FROM A WITNESS FROM PFIZER,

10:57AM 1 FROM WALGREENS, FROM ONE OR MORE WITNESSES WITH KNOWLEDGE OF
10:57AM 2 THERANOS'S RELATIONSHIP, OR LACK OF A MEANINGFUL RELATIONSHIP,
10:57AM 3 WITH THE MILITARY. AND THESE FOLKS WERE TELL YOU EXACTLY WHAT
10:57AM 4 THERANOS WAS DOING WITH THEM, WHAT THEY WERE DOING OR NOT
10:57AM 5 DOING, AND YOU'LL BE ABLE TO LINE THAT UP WITH THE ROSY
10:57AM 6 FALSEHOODS THAT THE DEFENDANT WAS GIVING TO INVESTORS.

10:57AM 7 THE THIRD CATEGORY OF WITNESSES THAT I EXPECT YOU WILL
10:57AM 8 HEAR FROM ARE THE INVESTORS THEMSELVES WHO LOST MILLIONS
10:58AM 9 INVESTING IN THERANOS.

10:58AM 10 I EXPECT THAT YOU WILL HEAR FROM A WOMAN NAMED
10:58AM 11 LISA PETERSON WHO HELPED MAKE DECISIONS FOR A FIRM CALLED RDV.

10:58AM 12 I ALSO EXPECT THAT YOU WILL HEAR FROM SOMEONE NAMED
10:58AM 13 BRIAN GROSSMAN WHO MANAGES INVESTMENTS FOR A FUND HERE IN THE
10:58AM 14 BAY AREA.

10:58AM 15 THEY, AND OTHER INVESTORS, I EXPECT WILL TELL YOU WHAT THE
10:58AM 16 DEFENDANT SAID REPEATEDLY TO MAKE THEM BELIEVE IN THERANOS AND
10:58AM 17 INVEST THEIR MONEY.

10:58AM 18 YOU WILL SEE THE QUESTIONS THAT THEY POSED TO THE
10:58AM 19 DEFENDANT AS PART OF THEIR INVESTMENT DECISION.

10:58AM 20 I'VE PUT UP A DOCUMENT THAT I ANTICIPATE WILL COME INTO
10:58AM 21 EVIDENCE. THIS IS FROM BRIAN GROSSMAN, THE INDIVIDUAL WHO RUNS
10:58AM 22 THE FUND HERE IN SAN FRANCISCO ON BEHALF OF OTHER INVESTORS.

10:59AM 23 AND YOU WILL SEE THAT BRIAN GROSSMAN AND OTHER INVESTORS
10:59AM 24 WERE ASKING ALL OF THE RIGHT QUESTIONS OF THERANOS AND
10:59AM 25 ULTIMATELY GOT WRONG, FALSE AND MISLEADING ANSWERS FROM THE

10:59AM 1 DEFENDANT.

10:59AM 2 WHAT ARE THE LIMITS OF YOUR EXISTING ANALYZER?

10:59AM 3 WHAT DOES IT COST TO PRODUCE?

10:59AM 4 WHAT IS THE CURRENT COST OF AN ANALYZER?

10:59AM 5 WHAT ARE GM, OR GROSS MARGIN, ON THE ANALYZERS?

10:59AM 6 YOU'RE GOING TO HEAR A LITTLE BIT ABOUT WHAT THAT TERM
10:59AM 7 MEANS AND HOW MR. GROSSMAN WAS TRYING TO UNDERSTAND HOW MUCH

10:59AM 8 DOES IT COST IS FOR YOU TO MAKE THAT MACHINE IN YOUR LAB? AND
10:59AM 9 YOU WILL HEAR THAT MR. GROSSMAN AND OTHERS GOT WRONG AND FALSE
10:59AM 10 AND MISLEADING ANSWERS FROM THE DEFENDANT.

10:59AM 11 FINALLY, YOU WILL HEAR FROM PATIENTS AND DOCTORS OF
10:59AM 12 PATIENTS WHO PAID FOR OR RECEIVED THERANOS'S BLOOD RESULTS,
11:00AM 13 RESULTS THAT THEY NEEDED AND WERE COUNTING ON TO MAKE THE RIGHT
11:00AM 14 MEDICAL DECISIONS.

11:00AM 15 NOW, BEFORE I SIT DOWN I WANT TO MAKE A FEW COMMENTS ABOUT
11:00AM 16 YOUR ROLES AS JURORS. OVER THE NEXT FEW WEEKS YOU'RE GOING TO
11:00AM 17 HEAR A LOT OF EVIDENCE. SOME OF IT IS TECHNICAL. YOU'RE GOING
11:00AM 18 TO HEAR ABOUT ASSAYS, LAB DIRECTORS, QUALITY CONTROL. SOME OF
11:00AM 19 THIS EVIDENCE MAY BE TECHNICAL, AND HONESTLY, SOME OF IT MAY BE
11:00AM 20 A LITTLE DRY. BUT NONE OF YOU WERE SELECTED AS JURORS BECAUSE
11:00AM 21 YOU HAVE A MEDICAL DEGREE OR BECAUSE YOU HAVE EXPERTISE IN THE
11:00AM 22 BLOOD TESTING BUSINESS.

11:00AM 23 YOU WERE SELECTED BECAUSE YOU HAVE THE ONE THING THAT ALL
11:00AM 24 JURORS NEED, WHICH IS COMMON SENSE, BECAUSE IN THE END, THIS IS
11:00AM 25 A CASE ABOUT FRAUD, ABOUT LYING AND DECEIVING TO GET MONEY,

11:00AM 1 ABOUT WHETHER THE STATEMENTS THAT THE DEFENDANT AND MS. HOLMES
11:00AM 2 TOLD INVESTORS AND TOLD PATIENTS MATCHED THE REALITY THAT YOU
11:01AM 3 WILL HEAR FROM THE INSIDERS.

11:01AM 4 THE EVIDENCE IN THIS CASE WILL SHOW THAT THE DEFENDANT
11:01AM 5 TOLD HIS INVESTORS THERANOS HAD DEVELOPED A MINI BLOOD ANALYZER
11:01AM 6 THAT COULD DO VIRTUALLY ANY TEST.

11:01AM 7 IT COULD NOT. IT NEVER DID MORE THAN 12 TESTS, AND IT DID
11:01AM 8 THOSE 12 TESTS BADLY.

11:01AM 9 THE EVIDENCE WILL SHOW THAT THE DEFENDANT TOLD INVESTORS
11:01AM 10 THE MILITARY WAS USING THE DEVICE IN THE FIELD.

11:01AM 11 IT WAS NOT.

11:01AM 12 THE EVIDENCE WILL SHOW THAT THE DEFENDANT TOLD INVESTORS
11:01AM 13 THERANOS MADE ALL OF ITS TESTING DEVICES.

11:01AM 14 IT DID NOT. IT WAS USING SIEMENS MACHINES.

11:01AM 15 THE EVIDENCE WILL SHOW THAT THE DEFENDANT TOLD INVESTORS
11:01AM 16 PHARMA AND THE MILITARY WERE GENERATING SUFFICIENT REVENUES TO
11:01AM 17 FUND THERANOS'S OPERATIONS.

11:01AM 18 THEY WERE NOT.

11:01AM 19 THE EVIDENCE WILL SHOW THAT THE DEFENDANT GAVE INVESTORS
11:01AM 20 FINANCIAL PROJECTIONS PURPORTEDLY REPRESENTING THE TRUE
11:02AM 21 PROSPECTS OF THE COMPANY.

11:02AM 22 THEY DID NOT.

11:02AM 23 THE EVIDENCE WILL SHOW THAT THE DEFENDANT INDUCED
11:02AM 24 INVESTMENTS ON THE PROMISE THAT THE WALGREENS ROLLOUT WAS A
11:02AM 25 SPECTACULAR SUCCESS.

11:02AM 1 IT WAS NOT.

11:02AM 2 FINALLY, THE EVIDENCE WILL SHOW THE DEFENDANT TOLD

11:02AM 3 PATIENTS THAT THERANOS'S TESTS WERE ACCURATE AND RELIABLE.

11:02AM 4 THEY WERE NOT. AND IN THE COURSE OF DOING SO, HE SKEWED

11:02AM 5 THE MEDICAL DECISIONS PATIENTS WERE MAKING AND PUT THEM AT

11:02AM 6 RISK.

11:02AM 7 THANK YOU, LADIES AND GENTLEMEN. THANK YOU FOR YOUR

11:02AM 8 PATIENCE WITH THE TECHNOLOGY.

11:02AM 9 THIS CONCLUDES THE GOVERNMENT'S OPENING STATEMENT.

11:02AM 10 AS I SAID, THIS IS A PREVIEW OF WHAT I ANTICIPATE THE

11:02AM 11 EVIDENCE WILL SHOW.

11:02AM 12 AT THE END OF THE CASE THE GOVERNMENT WILL HAVE AN

11:02AM 13 OPPORTUNITY TO SPEAK TO YOU AGAIN, AND AT THAT TIME WE WILL

11:02AM 14 URGE YOU TO RETURN THE ONE VERDICT THAT IS SUPPORTED BY ALL OF

11:02AM 15 THE EVIDENCE, WHICH IS THAT THE DEFENDANT IS GUILTY OF WIRE

11:03AM 16 FRAUD AND CONSPIRACY AS ALLEGED IN THE INDICTMENT.

11:03AM 17 THANK YOU FOR YOUR TIME.

11:03AM 18 THE COURT: THANK YOU, MR. LEACH.

11:03AM 19 DOES THE DEFENSE HAVE AN OPENING STATEMENT?

11:03AM 20 MR. CAZARES: YES. THANK YOU, YOUR HONOR.

11:03AM 21 YOUR HONOR, MAY I REQUEST A FEW MINUTES TO SET UP BEFORE

11:03AM 22 WE GET STARTED?

11:03AM 23 THE COURT: YES. LADIES AND GENTLEMEN, LET'S TAKE A

11:03AM 24 BRIEF RECESS.

11:03AM 25 WE'LL TAKE ABOUT A SEVEN MINUTE BREAK, AND THEN WE'LL COME

11:03AM 1 BACK, AND WE'LL LISTEN TO THE DEFENSE OPENING.

11:03AM 2 LADIES AND GENTLEMEN, LET ME TELL YOU, WE'RE GOING TO END
11:03AM 3 TODAY AT 2:30. WE'LL END TODAY AT 2:30. THAT'S THE SCHEDULE
11:03AM 4 FOR TODAY.

11:03AM 5 AND WE'LL -- DEPENDING ON THE LENGTH OF OPENINGS AND
11:03AM 6 DURATION OF THE WITNESS'S TESTIMONY, WE'LL SCHEDULE MORE BREAKS
11:03AM 7 FOR YOU THIS AFTERNOON.

11:03AM 8 BUT LET'S TAKE ABOUT A SEVEN, TEN MINUTE BREAK NOW, AND
11:03AM 9 THEN WE'LL HEAR FROM THE DEFENSE.

11:04AM 10 (JURY OUT AT 11:04 A.M.)

11:04AM 11 THE COURT: THANK YOU. PLEASE BE SEATED. THE
11:04AM 12 RECORD SHOULD REFLECT THAT THE JURORS HAVE LEFT FOR A BREAK.

11:04AM 13 ANYTHING BEFORE I STEP DOWN?

11:04AM 14 MR. COOPERSMITH: NO, YOUR HONOR.

11:04AM 15 MR. LEACH: NO, YOUR HONOR.

11:04AM 16 (RECESS FROM 11:04 A.M. UNTIL 11:22 A.M.)

11:22AM 17 (JURY IN AT 11:22 A.M.)

11:22AM 18 THE COURT: THANK YOU. PLEASE BE SEATED. THANK YOU
11:22AM 19 FOR YOUR COURTESY.

11:22AM 20 WE'RE BACK ON THE RECORD.

11:22AM 21 ALL PARTIES AND JURY IS ONCE AGAIN PRESENT. OUR
11:22AM 22 ALTERNATES ARE PRESENT.

11:22AM 23 JUST A MOMENT, AND WE'LL TURN OUR EQUIPMENT ON.

11:22AM 24 (PAUSE IN PROCEEDINGS.)

11:22AM 25 THE COURT: DOES THE DEFENSE HAVE AN OPENING

11:22AM 1 STATEMENT?

11:22AM 2 MR. CAZARES: YES, YOUR HONOR. THANK YOU VERY MUCH,
11:22AM 3 YOUR HONOR.

11:22AM 4 THE COURT: PLEASE PROCEED. THANK YOU.

11:22AM 5 MR. CAZARES: AND, YOUR HONOR, MAY I REMOVE MY MASK?

11:22AM 6 THE COURT: YES.

11:22AM 7 **(COUNSEL FOR DEFENDANT GAVE THEIR OPENING STATEMENT.)**

11:22AM 8 MR. CAZARES: MAY IT PLEASE THE COURT.

11:22AM 9 LADIES AND GENTLEMEN OF THE JURY, MY NAME IS
11:23AM 10 STEPHEN CAZARES. AND I, ALONG WITH JEFF COOPERSMITH, WHO YOU
11:23AM 11 HAVE ALREADY MET, MY COCOUNSEL, AS WELL AS I'M GOING TO
11:23AM 12 REINTRODUCE YOU TO AMY WALSH, IT IS OUR HONOR AND OUR PRIVILEGE
11:23AM 13 TO REPRESENT SUNNY BALWANI IN THIS CASE.

11:23AM 14 AND WHAT I'M GOING TO DO IS TO TALK ABOUT SOME OF THE
11:23AM 15 EVIDENCE THAT YOU'RE GOING TO HEAR IN THIS CASE AND YOU'RE
11:23AM 16 GOING TO SEE IN THIS TRIAL THAT IS GOING TO DEMONSTRATE THAT
11:23AM 17 SUNNY BALWANI COMMITTED NO CRIME, HE COMMITTED NO FRAUD, AND
11:23AM 18 NEVER INTENDED TO DECEIVE OR CHEAT ANYBODY, NOT INVESTORS AND
11:23AM 19 NOT PATIENTS.

11:23AM 20 WHAT YOU'RE GOING TO LEARN IN THIS TRIAL, AND I DON'T
11:23AM 21 THINK IT'S GOING TO BE DISPUTED, SUNNY BALWANI DID NOT START
11:23AM 22 THERANOS, HE DID NOT CONTROL THERANOS, HE DID NOT HAVE FINAL
11:23AM 23 BUSINESS DECISION MAKING AUTHORITY AT THERANOS.

11:23AM 24 AND YOU'LL LEARN THAT IN MAY OF 2016 SUNNY LEFT THERANOS.
11:23AM 25 AND WHEN SUNNY BALWANI LEFT THERANOS IN MAY OF 2016, THERANOS

11:24AM 1 HAD HUNDREDS OF MILLIONS OF DOLLARS, INVESTOR DOLLARS, SITTING
11:24AM 2 IN THERANOS'S BANK ACCOUNT.

11:24AM 3 WHEN SUNNY BALWANI LEFT THERANOS IN MAY OF 2016, THERANOS
11:24AM 4 HAD DEVELOPED VALUABLE INTELLECTUAL PROPERTY, THEY HAD PATENTS
11:24AM 5 FOR THEIR FINGERSTICK TECHNOLOGY, THEY HAD INNOVATIVE
11:24AM 6 FINGERSTICK TECHNOLOGY THAT THEY HAD DEVELOPED, AND THEY HAD
11:24AM 7 TWO CLINICAL LABORATORIES, HUNDREDS OF LABORATORY SCIENTISTS,
11:24AM 8 RESEARCH AND DEVELOPMENT LABORATORY AS WELL, ALL READY TO GROW
11:24AM 9 AND CONTINUE TO DO BUSINESS BECAUSE THE COMPANY HAD HUNDREDS OF
11:24AM 10 MILLIONS OF DOLLARS WHEN HE WALKED AWAY. THAT'S WHAT THE
11:24AM 11 EVIDENCE IS GOING TO SHOW.

11:24AM 12 NOW, THE GOVERNMENT ALLEGES THAT THERANOS'S FINGERSTICK
11:24AM 13 TECHNOLOGY WAS NOT CAPABLE OF CONSISTENTLY PRODUCING ACCURATE
11:24AM 14 AND RELIABLE RESULTS. THAT'S REALLY THE ALLEGATION AT THE CORE
11:24AM 15 OF THIS CASE. THE GOVERNMENT CLAIMS THAT THE TECHNOLOGY DIDN'T
11:24AM 16 WORK, COULD NEVER WORK. YOU HEARD THE GOVERNMENT SUGGEST THAT
11:25AM 17 ONLY 12 TESTS WERE EVER CREATED.

11:25AM 18 BUT WHAT THE EVIDENCE IS GOING TO SHOW AND WHAT YOU'RE
11:25AM 19 GOING TO LEARN IN THIS TRIAL IS THAT THE GOVERNMENT ITSELF
11:25AM 20 NEVER OBTAINED OVER THREE YEARS OF TESTING DATA PATIENT RESULTS
11:25AM 21 AND RELATED RECORDS FROM THERANOS.

11:25AM 22 THE GOVERNMENT NEVER OBTAINED OVER THREE YEARS OF PATIENT
11:25AM 23 TESTING RECORDS AND DATA AND ANALYZED IT BEFORE THEY CHARGED
11:25AM 24 MR. BALWANI.

11:25AM 25 AND AS WE STAND HERE TODAY, THE GOVERNMENT HAS NEVER

11:25AM 1 OBTAINED THE THREE-PLUS YEARS OF TESTING RECORDS AND RELATED
11:25AM 2 DATA AND ANALYZED IT TO TRY TO PROVE THE ALLEGATION THAT THE
11:25AM 3 GOVERNMENT MAKES, THAT THERANOS'S TECHNOLOGY IS NOT CAPABLE OF
11:25AM 4 CONSISTENTLY PRODUCING ACCURATE AND RELIABLE RESULTS.

11:25AM 5 THAT'S WHAT WE BELIEVE THE EVIDENCE IS GOING TO SHOW.

11:25AM 6 IN ADDITION, THE GOVERNMENT ALLEGES THAT SUNNY BALWANI
11:25AM 7 TRIED TO CHEAT AND DECEIVE INVESTORS AND PATIENTS TO KIND OF
11:25AM 8 TAKE THEIR MONEY. THAT'S WHAT A WIRE FRAUD CHARGE IS. THE
11:25AM 9 GOVERNMENT HAS ALLEGED HE INTENDED TO CHEAT INVESTORS AND
11:26AM 10 PATIENTS OUT OF THEIR MONEY.

11:26AM 11 BUT WHAT YOU'RE GOING TO LEARN IN THIS TRIAL IS THAT THE
11:26AM 12 INVESTOR MONEY IN THERANOS WAS USED EXACTLY AS INVESTORS
11:26AM 13 INTENDED IT TO BE USED. IT WAS USED TO BUILD THE BUSINESS. IT
11:26AM 14 WAS USED TO DEVELOP THE FINGERSTICK TECHNOLOGY.

11:26AM 15 YOU'RE ALSO GOING TO LEARN THAT SUNNY WAS ONE OF THOSE
11:26AM 16 INVESTORS IN THERANOS. AND YOU'RE GOING TO LEARN THAT DURING
11:26AM 17 THE COURSE OF SUNNY WORKING AT THERANOS, SUNNY NEVER TOOK A
11:26AM 18 SINGLE DOLLAR FROM THERANOS.

11:26AM 19 YOU HEARD THE GOVERNMENT SUGGEST THAT SUNNY'S STOCK IN
11:26AM 20 THERANOS WAS WORTH MAYBE HALF A BILLION DOLLARS AT ONE POINT IN
11:26AM 21 TIME, AND I'LL TALK ABOUT THAT A LITTLE LATER.

11:26AM 22 BUT THERE'S NO EVIDENCE, AND THE GOVERNMENT DOESN'T EVEN
11:26AM 23 ALLEGE, THAT SUNNY TOOK ANY INVESTOR MONEY OR USED IT
11:26AM 24 IMPROPERLY.

11:26AM 25 IN FACT, WHAT YOU'RE GOING TO LEARN IS SUNNY INVESTED HIS

11:26AM 1 OWN MONEY, ALMOST \$5 MILLION, INTO THERANOS BECAUSE HE BELIEVED
11:26AM 2 IN THE COMPANY, HE BELIEVED IN THE TECHNOLOGY, AND HE BELIEVED
11:27AM 3 IN ITS FUTURE.

11:27AM 4 THAT'S WHAT THE EVIDENCE IS GOING TO SHOW.

11:27AM 5 NOW, REMEMBER WHAT THE COURT INSTRUCTED YOU. YOU'RE THE
11:27AM 6 JURY AND IT'S YOUR ROLE IN DECIDING THE FACTS IN THIS CASE.

11:27AM 7 YOU'RE GOING TO GET TOGETHER, 12 MEMBERS OF THE JURY, HEAR
11:27AM 8 ALL OF THE EVIDENCE, DISCUSS IT, AND THEN YOU DECIDE WHAT THE
11:27AM 9 TRUTH IS AND WHAT THE TRUTH IS NOT.

11:27AM 10 AND IN THE COURSE OF JURY SELECTION, YOU WILL RECALL SOME
11:27AM 11 PROSPECTIVE JURORS, AND MAYBE EVEN SOME OF YOU, REPORTED TO THE
11:27AM 12 COURT THAT YOU HEARD THINGS ABOUT THERANOS, YOU HEARD THINGS
11:27AM 13 ABOUT ELIZABETH HOLMES IN THE NEWS, IN THE MEDIA, IN THE
11:27AM 14 NEWSPAPERS, MAYBE EVEN T.V. SHOWS OR DOCUMENTARIES.

11:27AM 15 THE COURT INSTRUCTED YOU, AND IT'S REALLY IMPORTANT TO
11:27AM 16 KEEP IN MIND, THE HEADLINES AND THE SENSATIONAL STORIES ABOUT
11:27AM 17 THERANOS AND ELIZABETH HOLMES HAVE NO PLACE IN THIS TRIAL.
11:27AM 18 YOU'RE SUPPOSED TO MAKE YOUR DECISIONS BASED ON THE EVIDENCE
11:27AM 19 THAT YOU SEE AND HEAR IN THIS CASE.

11:28AM 20 AND BECAUSE OF THAT, WE ASK YOU TO KEEP AN OPEN MIND.
11:28AM 21 RESIST THE URGE TO REACH A CONCLUSION RIGHT AWAY.

11:28AM 22 YOU'LL HEAR FROM A COUPLE OF GOVERNMENT WITNESSES.
11:28AM 23 THEY'RE GOING TO POINT TO AN EMAIL, QUALITY CONTROL FAILED,
11:28AM 24 MAYBE SOMEBODY HAD A COMPLAINT, A PATIENT HAS QUESTIONS ABOUT
11:28AM 25 THEIR RESULTS. THOSE KINDS OF COMPLAINTS AND ISSUES ARE ALMOST

11:28AM 1 LIKE THOSE MEDIA HEADLINES, IT RAISES AN ISSUE, BUT UNTIL YOU
11:28AM 2 DIG IN AND UNDERSTAND THE FACTS, WHY DID QUALITY CONTROL FAIL?
11:28AM 3 WHAT WAS THE REAL CAUSE? YOU'LL HAVE TO FIGURE OUT WHETHER OR
11:28AM 4 NOT THE GOVERNMENT PRESENTS THAT TO YOU.

11:28AM 5 WHAT WAS THE ANSWER TO THAT PATIENT'S QUESTION ABOUT THE
11:28AM 6 RESULTS THAT THEY RAISED TO THE LAB AND TO THE SCIENTISTS?

11:28AM 7 THAT'S WHY WE ASK YOU TO JUST WAIT UNTIL YOU HEAR ALL OF
11:28AM 8 THE EVIDENCE AND HEAR FROM THE DEFENSE BEFORE YOU START
11:28AM 9 REACHING CONCLUSIONS. BECAUSE WE SUSPECT THAT ONCE YOU HEAR
11:28AM 10 ALL OF THE EVIDENCE AND CONSIDER ALL OF THE EVIDENCE, THAT YOU
11:29AM 11 WILL REACH THE SAME CONCLUSION THAT SUNNY BALWANI DID ABOUT
11:29AM 12 THERANOS: IT WAS A GREAT IDEA, IT WAS A TECHNOLOGY THAT COULD
11:29AM 13 CHANGE BLOOD TESTING, AND THAT SUNNY WORKED 24 HOURS A DAY,
11:29AM 14 7 DAYS A WEEK FOR OVER 6 YEARS TO TRY TO MAKE IT A SUCCESS FOR
11:29AM 15 INVESTORS AND FOR PATIENTS WHO USED THERANOS'S BLOOD TESTING
11:29AM 16 SERVICES.

11:29AM 17 IN ADDITION, AS I SAID, YOU'RE GOING TO LEARN SUNNY NEVER
11:29AM 18 MADE A DIME FROM THERANOS, AND YOU'LL SEE NO EVIDENCE OF THAT
11:29AM 19 IN THIS CASE.

11:29AM 20 NOW, I'M GOING TO TRANSITION NOW, AND WE'RE GOING TO TALK
11:29AM 21 ABOUT SOME OF THE EVIDENCE THAT YOU'RE GOING TO SEE AND HEAR IN
11:29AM 22 THIS TRIAL THAT IS GOING TO DEMONSTRATE AND SHOW THAT SUNNY DID
11:29AM 23 NOT DECEIVE OR CHEAT INVESTORS OR PATIENTS.

11:29AM 24 NOW, ON THE -- YOUR LEFT SIDE OF THE JURY ROOM YOU'LL SEE
11:29AM 25 THERE'S LIKE A TIMELINE THAT YOU'LL SEE UP THERE. AND I PUT IT

11:29AM 1 UP THERE JUST AS A GUIDEPOST FOR YOU, BECAUSE THE TIME PERIOD
11:29AM 2 THAT WE'RE TALKING ABOUT IN THIS CASE, THAT ACTUALLY SPANS SIX
11:30AM 3 YEARS, SEVEN YEARS OR MORE.

11:30AM 4 YOU HEARD THE GOVERNMENT TALK A LITTLE BIT ABOUT THE
11:30AM 5 BEGINNING, YOU HEARD THEM TALK ABOUT A LITTLE BIT AT THE END.
11:30AM 6 WHAT WE ARE GOING TO TALK ABOUT IS RIGHT IN THE MIDDLE, AND
11:30AM 7 THAT'S WHY I THINK IT'S IMPORTANT FOR YOU TO HAVE SOME POINTS
11:30AM 8 TO KEEP YOUR FOCUS ON WHERE WE ARE AT.

11:30AM 9 AND THE TIMEFRAME STARTS IN 2009 FOR US WHEN SUNNY JOINED
11:30AM 10 THERANOS.

11:30AM 11 BEFORE 2009 SUNNY HAD NOTHING TO DO WITH THERANOS. IT WAS
11:30AM 12 ELIZABETH'S COMPANY, AND WE'LL TALK ABOUT THE DETAILS.

11:30AM 13 AND THROUGH 2009 AND UNTIL MAY OF 2016, WHAT THE EVIDENCE
11:30AM 14 IS GOING TO SHOW IS THAT SUNNY LEARNED ABOUT THE BUSINESS FROM
11:30AM 15 THE SCIENTISTS, FROM ELIZABETH AND OTHERS INVOLVED IN THE
11:30AM 16 COMPANY, AND HE BELIEVED IN THE TECHNOLOGY.

11:30AM 17 AS I SAID, THE EVIDENCE IS GOING TO SHOW THAT SUNNY DID
11:30AM 18 NOT DEFRAUD INVESTORS OR PATIENTS ABOUT THERANOS'S TECHNOLOGY.

11:30AM 19 AND SOME OF THE EVIDENCE THAT YOU'RE GOING TO LEARN ABOUT
11:31AM 20 AND HEAR AND SEE IN THIS TRIAL INCLUDES THE FACT THAT THERANOS
11:31AM 21 SCIENTISTS, THEIR ENGINEERS AND SCIENTISTS IN THE LAB, CREATED
11:31AM 22 HUNDREDS OF FINGERSTICK TESTS USING THERANOS'S TECHNOLOGY.

11:31AM 23 YOU HEARD THE GOVERNMENT TALK ABOUT 12 TESTS, 12 TESTS,
11:31AM 24 THAT'S ALL IT COULD DO.

11:31AM 25 WELL, IN FACT, THOUGH, THE SCIENTISTS DEVELOPED HUNDREDS

1 OF TESTS USING THERANOS'S TECHNOLOGY.

2 YOU'RE ALSO GOING TO LEARN THAT THERANOS DID NOT HIDE ITS
3 USE OF COMMERCIAL DEVICES.

4 YOU HEARD THE GOVERNMENT TALK ABOUT SIEMENS ANALYZERS, THE
5 BIG CLUNKY ANALYZERS THAT WERE USED IN MOST COMMERCIAL LABS.

6 THERANOS DID USE SOME OF THOSE ANALYZERS.

7 AND YOU'RE ALSO GOING TO LEARN THAT THERANOS DID NOT HIDE
8 THAT USE OF COMMERCIAL DEVICES OR TRADITIONAL VEIN DRAW
9 TESTING. THE PUBLIC KNEW.

10 AND YOU'RE ALSO GOING TO LEARN THAT THOSE FINANCIAL MODELS
11 THAT THE GOVERNMENT SHOWED YOU THAT WERE GIVEN TO INVESTORS --
12 AND IT'S TRUE, INVESTORS WERE GIVEN FINANCIAL MODELS, NOT A
13 FORECAST LIKE PUBLIC COMPANIES DO, LIKE APPLE MAYBE PROJECT
14 BILLIONS OF DOLLARS OF REVENUE IN THE NEXT QUARTER. THAT'S NOT
15 WHAT INVESTORS WERE GIVEN.

16 THEY WERE GIVEN A MODEL, AND THOSE MODELS INCLUDED
17 REFERENCES TO FACTS THAT WALGREENS WAS TELLING SUNNY ABOUT
18 WALGREENS'S INTENT TO ROLL OUT THAT BUSINESS. THAT'S WHAT THE
19 MODELS REFLECTED, AND THAT'S WHAT THE EVIDENCE IS GOING TO
20 SHOW.

21 NOW, AS I MENTIONED BEFORE, WE BELIEVE THAT ONCE YOU SEE
22 AND HEAR ALL OF THE EVIDENCE IN THIS TRIAL, YOU WILL CONCLUDE
23 THAT SUNNY BELIEVED IN THERANOS, HE BELIEVED IN ITS TECHNOLOGY,
24 AND HE BELIEVED IN ITS MISSION.

25 FIRST, YOU'RE GOING TO LEARN A LITTLE BIT ABOUT SUNNY

11:32AM 1 HIMSELF. SUNNY WAS BORN IN SOUTH ASIA TO A FAMILY OF THREE
11:32AM 2 OLDER SISTERS, TWO BROTHERS. SUNNY'S BROTHERS ARE HERE IN THE
11:32AM 3 COURTROOM WATCHING TRIAL HERE TODAY.

11:32AM 4 AND SUNNY COMES FROM A FAMILY OF SIX GENERATIONS OF
11:32AM 5 ENTREPRENEURS, OF SUCCESSFUL FARMERS. THEY ALSO HAD FACTORIES
11:33AM 6 IN THEIR BUSINESS WHERE THEY MADE PRODUCTS FROM THE FARMS.

11:33AM 7 THAT'S HOW SUNNY GREW UP. HE GREW UP IN A FAMILY OF
11:33AM 8 BUSINESS PEOPLE, OF ENTREPRENEURS.

11:33AM 9 BUT BACK THEN SUNNY'S PARENTS DIDN'T GO TO COLLEGE. HE
11:33AM 10 WANTED SOMETHING DIFFERENT. SO SUNNY WAS THE FIRST IN HIS
11:33AM 11 FAMILY TO GO TO COLLEGE, AND TO DO THAT HE CAME TO THE
11:33AM 12 UNITED STATES IN 1986.

11:33AM 13 AND WHEN HE CAME TO THE UNITED STATES ON A STUDENT VISA,
11:33AM 14 SUNNY WENT TO COLLEGE AT THE UNIVERSITY OF TEXAS AT AUSTIN AND
11:33AM 15 STUDIED INFORMATION SYSTEMS AND GOT HIS DEGREE IN 1990.

11:33AM 16 AFTER GETTING HIS DEGREE AT THE UNIVERSITY OF TEXAS,
11:33AM 17 AUSTIN, AGAIN, INFORMATION SYSTEMS, SUNNY CAME HERE TO
11:33AM 18 SILICON VALLEY AND JOINED A STARTUP AS AN ENGINEER.

11:33AM 19 AND SOON AFTER THAT STARTUP WAS ACQUIRED BY WHAT WAS THEN,
11:33AM 20 IT'S AN OLD NAME NOW, BUT IT WAS THEN A GIANT IN SILICON VALLEY
11:33AM 21 CALLED LOTUS DEVELOPMENT CORPORATION. AND SUNNY WAS AN
11:33AM 22 ENGINEER AT LOTUS FOR A FEW YEARS, AGAIN, WORKING WITH
11:34AM 23 COMPUTERS, WORKING WITH SOFTWARE. THAT'S WHAT SUNNY DID. THAT
11:34AM 24 WAS HIS AREA OF EXPERTISE.

11:34AM 25 A FEW YEARS LATER SUNNY LEFT LOTUS AND JOINED MICROSOFT.

11:34AM 1 THIS IS IN THE MID '90S, THE DAWN OF THE INTERNET AGE.

11:34AM 2 AND AGAIN, SUNNY WAS AN ENGINEER, A MANAGER AT MICROSOFT,
11:34AM 3 COMPUTERS, SOFTWARE, DATABASES. THAT WAS HIS AREA OF
11:34AM 4 EXPERTISE.

11:34AM 5 BUT AT HEART SUNNY WAS AN ENTREPRENEUR LIKE HIS FATHER,
11:34AM 6 LIKE HIS GRANDFATHER. YOU'LL LEARN HE PROBABLY REALLY DIDN'T
11:34AM 7 LIKE TO BE AN EMPLOYEE OR SOMEONE ELSE'S EMPLOYEE.

11:34AM 8 BUT HE HAD AN IDEA. HE HAD AN IDEA FOR A BUSINESS.

11:34AM 9 AND THE IDEA THAT SUNNY HAD FOR A BUSINESS WAS WHAT WAS
11:34AM 10 CALLED A BUSINESS-TO-BUSINESS PLATFORM THAT WOULD ALLOW
11:34AM 11 BUSINESSES TO BUY AND SELL OBJECTS, KIND OF EQUIPMENT, THINGS
11:34AM 12 THAT THEY NEEDED TO RUN THE BUSINESSES.

11:34AM 13 AT THE TIME IT WAS PRETTY INNOVATIVE. NOW IT'S A LITTLE
11:34AM 14 DIFFERENT. BUT SUNNY STARTED THAT COMPANY, AND IT WAS CALLED
11:35AM 15 COMMERCEBID, AND IT WAS IN THE E-COMMERCE BUSINESS-TO-BUSINESS
11:35AM 16 ACTIVITY AND OPERATION, AND IT WAS A SUCCESS. HE FOUNDED THE
11:35AM 17 BUSINESS WITH A COLLEAGUE. THEY DEVELOPED THE BUSINESS.

11:35AM 18 AT THE SAME TIME IN 1999 SUNNY BECAME A CITIZEN IN
11:35AM 19 UNITED STATES REALIZING ONE OF HIS DREAMS.

11:35AM 20 NOW, THAT COMPANY THAT SUNNY STARTED, COMMERCEBID, WAS A
11:35AM 21 SUCCESS. PEOPLE WERE INTERESTED IN IT. THIS WAS AN IMPORTANT
11:35AM 22 TIME PERIOD IN SILICON VALLEY. AND ANOTHER COMPANY, A LARGER
11:35AM 23 BUSINESS-TO-BUSINESS E-COMMERCE BUSINESS COMPANY ACQUIRED
11:35AM 24 COMMERCEBID FROM SUNNY AND FROM HIS PARTNERS. THEY REALIZED A
11:35AM 25 DREAM. THEY HAD A GREAT IDEA, STARTED A COMPANY, OTHER PEOPLE

11:35AM 1 LIKED THAT IDEA, AND ACTUALLY BOUGHT IT FROM HIM. SUNNY WAS A
11:35AM 2 SUCCESS AT THAT POINT.

11:35AM 3 HE JOINED COMMERCE ONE AS A RESULT OF THAT TRANSACTION AND
11:35AM 4 WORKED FOR COMMERCE ONE FOR A TIME PERIOD.

11:35AM 5 BUT ULTIMATELY SUNNY, AGAIN, HE'S AN ENTREPRENEUR, HE
11:35AM 6 WASN'T REALLY INTERESTED IN STAYING WORKING FOR SOMEONE ELSE,
11:36AM 7 AND HE LEFT BECAUSE AT THAT POINT HE WAS A SUCCESS. HE MADE
11:36AM 8 MONEY FROM THE SALE AND DIDN'T REALLY NEED TO WORK.

11:36AM 9 SO WHAT YOU'LL LEARN ABOUT IN THIS TRIAL, WHAT HAPPENED
11:36AM 10 NEXT WAS THAT SUNNY, IN DECIDING WHAT HE WANTED TO DO NEXT,
11:36AM 11 DECIDED TO GO BACK TO SCHOOL.

11:36AM 12 HE WENT TO SCHOOL AT THE UNIVERSITY OF CALIFORNIA BERKELEY
11:36AM 13 TO GET HIS MBA. AND WHILE AT BERKELEY EARNING HIS MBA, SUNNY
11:36AM 14 DECIDED TO PARTICIPATE IN WHAT WAS CALLED A STUDY ABROAD
11:36AM 15 PROGRAM WHERE IF YOU GO TO ANOTHER UNIVERSITY IN ANOTHER
11:36AM 16 COUNTRY, AND SUNNY DID THAT. HE WENT TO BEIJING UNIVERSITY TO
11:36AM 17 LEARN MANDARIN.

11:36AM 18 AND IT WAS DURING THAT TIME PERIOD WHILE AT BEIJING
11:36AM 19 UNIVERSITY LEARNING MANDARIN AT THAT STUDY ABROAD PROGRAM THAT
11:36AM 20 SUNNY MET ELIZABETH HOLMES, WHO WAS ALSO IN THAT PROGRAM
11:36AM 21 STUDYING MANDARIN OVERSEAS.

11:36AM 22 THEY GOT TO KNOW EACH OTHER, BECAME ACQUAINTED.

11:36AM 23 BUT ULTIMATELY THE PROGRAM ENDED. THEY BOTH CAME BACK TO
11:36AM 24 THE UNIVERSITY.

11:36AM 25 SUNNY GOT HIS MBA IN 2003. BUT HE WAS STILL LOOKING FOR

11:37AM 1 WHAT HE WANTED TO DO NEXT. HE HAD IDEAS WITH COMPANIES. HE
11:37AM 2 WAS INVESTING IN OTHER COMPANIES, AND IN THE MEANTIME HE
11:37AM 3 DECIDED TO ENROLL AT STANFORD UNIVERSITY IN THEIR COMPUTER
11:37AM 4 SCIENCE GRADUATE COMPUTER PROGRAM. THIS IS IN 2004.

11:37AM 5 AND IN THAT TIME PERIOD WHEN SUNNY WAS BACK AT STANFORD,
11:37AM 6 THAT'S WHEN HE REACQUAINTED WITH ELIZABETH HOLMES. THEY GOT TO
11:37AM 7 KNOW EACH OTHER. THEY STARTED DATING. ULTIMATELY ELIZABETH
11:37AM 8 ACTUALLY MOVED IN WITH SUNNY, AND THEY LIVED TOGETHER IN
11:37AM 9 SUNNY'S CONDOMINIUM IN PALO ALTO.

11:37AM 10 WELL, WHAT YOU'RE GOING TO LEARN IN THIS TRIAL IS THAT
11:37AM 11 FROM THAT POINT WHEN THEY RECONNECTED AND BECAME A COUPLE, THEY
11:37AM 12 WERE A COUPLE ROMANTICALLY, BUT LIVED PARALLEL LIVES.

11:37AM 13 ELIZABETH HAD HER OWN BUSINESS IDEAS AND COMPANY THAT IS
11:37AM 14 THE SUBJECT OF THIS TRIAL, AND WE'LL TALK ABOUT THAT. BUT AT
11:37AM 15 THE TIME SUNNY WASN'T APART OF THOSE. SUNNY HAD HIS OWN IDEAS
11:37AM 16 ABOUT NEW STARTUPS AND ABOUT INVESTING.

11:38AM 17 AND THAT'S WHAT YOU'RE GOING TO LEARN THAT FROM THAT TIME
11:38AM 18 PERIOD, 2003, '04, '05 ALL OF THE WAY UNTIL 2009,
11:38AM 19 ELIZABETH HOLMES, NOT SUNNY, FOUNDED THERANOS AND BUILT
11:38AM 20 THERANOS.

11:38AM 21 AND WHAT THERANOS WAS, WAS A DIAGNOSTICS COMPANY STARTED
11:38AM 22 BY ELIZABETH, AND HER INTENT WAS TO CREATE A COMPREHENSIVE
11:38AM 23 BLOOD TESTING SYSTEM USING SMALL BLOOD SAMPLES ON A
11:38AM 24 FINGERSTICK. AND ELIZABETH'S IDEA FOR THE COMPANY, BEFORE
11:38AM 25 SUNNY HAD ANYTHING TO DO WITH IT, WAS TO REVOLUTIONIZE BLOOD

11:38AM 1 TESTING. AND ELIZABETH'S REVOLUTION FOR BLOOD TESTING HAD
11:38AM 2 THREE ELEMENTS THAT WERE REALLY IMPORTANT TO THE BUSINESS IDEA
11:38AM 3 AND THE FUTURE OF THE COMPANY.

11:38AM 4 THE FIRST ELEMENT WAS TO MAKE THE BLOOD TESTING EXPERIENCE
11:38AM 5 MORE COMFORTABLE BY USING THE FINGERSTICK TECHNOLOGY AND KIND
11:38AM 6 OF MORE OF A HOLISTIC APPROACH SO THAT PEOPLE WOULDN'T BE
11:38AM 7 AFRAID TO GO GET TESTED. THEY MIGHT GET TESTED MORE OFTEN.
11:39AM 8 THAT WAS THE IDEA.

11:39AM 9 THE SECOND ELEMENT TO ELIZABETH'S VISION TO REVOLUTIONIZE
11:39AM 10 BLOOD TESTING WAS TO MAKE IT CONVENIENT. PLACE THE TESTING
11:39AM 11 NEAR WHERE PEOPLE LIVED THEIR EVERY DAY LIVES, AGAIN, TO
11:39AM 12 ENCOURAGE THEM TO GET TESTED MORE OFTEN.

11:39AM 13 AND THE THIRD ELEMENT TO ELIZABETH'S VISION TO
11:39AM 14 REVOLUTIONIZE BLOOD TESTING WAS TO MAKE IT AFFORDABLE SO
11:39AM 15 EVERYBODY COULD AFFORD IT, EVEN PEOPLE WITHOUT INSURANCE, SO
11:39AM 16 YOU WOULD BE ENCOURAGED TO GET TESTED MORE OFTEN, FIND PROBLEMS
11:39AM 17 BEFORE IT WAS TOO LATE. THAT WAS THE BUSINESS PLAN. THAT WAS
11:39AM 18 THE VISION THAT ELIZABETH HAD FOR THERANOS, AGAIN, ALL BEFORE
11:39AM 19 SUNNY EVER HAD ANYTHING TO DO WITH THE COMPANY.

11:39AM 20 AND IN THIS TIME PERIOD BETWEEN 2006 AND 2009, ELIZABETH,
11:39AM 21 NOT SUNNY, BUILT THERANOS INTO A SOPHISTICATED, SMALL, BUT
11:39AM 22 SOPHISTICATED DIAGNOSTICS COMPANY.

11:39AM 23 AT THAT TIME IN THE 2009 TIME PERIOD -- OH, THERE WE GO.

11:40AM 24 IN THAT TIME PERIOD ELIZABETH ASSEMBLED SOME OF THE MOST
11:40AM 25 SOPHISTICATED AND SUCCESSFUL INVESTORS IN SILICON VALLEY HAVING

11:40AM 1 NOTHING TO DO WITH SUNNY. THIS IS HER. THIS IS WHAT SHE
11:40AM 2 BUILT.

11:40AM 3 SOME OF THE PEOPLE WHO WERE EARLY INVESTORS IN ELIZABETH'S
11:40AM 4 COMPANY WAS SOMEBODY NAMED LARRY ELLISON, WHO FOUNDED A
11:40AM 5 SILICON VALLEY GIANT, ORACLE. ONE OF THE MOST SUCCESSFUL
11:40AM 6 BUSINESSMEN IN SILICON VALLEY HISTORY. EARLY INVESTOR AND
11:40AM 7 MEMBER OF ELIZABETH'S BOARD.

11:40AM 8 DON LUCAS, ALSO AN EARLY INVESTOR, FORMER CHAIRMAN OF
11:40AM 9 ORACLE. ONE OF ELIZABETH'S EARLY BOARD MEMBERS IN THE COMPANY.

11:40AM 10 TIM DRAPER, ONE OF THE MOST SUCCESSFUL INVESTORS IN
11:40AM 11 SILICON VALLEY HISTORY. EARLY INVESTOR IN TESLA, COINBASE,
11:40AM 12 RING, AND TWITTER. AN EARLY INVESTOR WITH ELIZABETH AND A
11:40AM 13 MEMBER OF THE BOARD OF DIRECTORS, ALL BEFORE SUNNY HAD ANYTHING
11:41AM 14 TO DO WITH THERANOS.

11:41AM 15 AND DR. CHANNING ROBERTSON, PROFESSOR AND HEAD OF CHEMICAL
11:41AM 16 ENGINEERING AT STANFORD. AN EARLY INVESTOR, A MEMBER OF
11:41AM 17 ELIZABETH'S BOARD, AND A MENTOR TO ELIZABETH ON THE SCIENCE
11:41AM 18 BEHIND THERANOS'S TECHNOLOGY.

11:41AM 19 THIS WAS THE TEAM THAT WAS BEHIND ELIZABETH BEFORE SUNNY
11:41AM 20 HAD ANYTHING TO DO WITH THERANOS.

11:41AM 21 AND YOU'RE ALSO GOING TO LEARN ABOUT THE PARTNERSHIPS
11:41AM 22 ELIZABETH HAD WITH PHARMACEUTICAL COMPANIES. THE GOVERNMENT
11:41AM 23 ALLUDED TO IT. AGAIN, MOST OF THIS HAPPENED BEFORE SUNNY HAD
11:41AM 24 ANYTHING TO DO WITH THE COMPANY.

11:41AM 25 THERANOS HAD A PARTNERSHIP WITH PFIZER. MANY OF YOU ARE

11:41AM 1 FAMILIAR WITH PFIZER. MANY OF YOU HAD THEIR COVID VACCINE.
11:41AM 2 THERANOS WAS DOING BUSINESS WITH PFIZER;
11:41AM 3 ALSO DOING BUSINESS WITH CELGENE, ANOTHER PHARMACEUTICAL
11:41AM 4 COMPANY;
11:41AM 5 ASTRAZENECA;
11:41AM 6 NOVARTIS;
11:41AM 7 THE MAYO CLINIC, THE FOREMOST MEDICAL INSTITUTION IN THE
11:41AM 8 WORLD;
11:41AM 9 GLAXOSMITHKLINE; CENTOCOR, SCHERING-PLOUGH; MERCK.
11:42AM 10 ELIZABETH AND HER COMPANY, BEFORE SUNNY HAD ANYTHING TO DO
11:42AM 11 WITH THERANOS, WAS DOING BUSINESS WITH SOME OF THE LARGEST
11:42AM 12 PHARMACEUTICAL COMPANIES IN THE WORLD.
11:42AM 13 WHAT THERANOS DID IS PROVIDE THEIR TESTING SYSTEM TO THE
11:42AM 14 PHARMACEUTICAL COMPANIES TO USE IN CLINICAL STUDIES WHERE THE
11:42AM 15 DRUG COMPANIES WERE TESTING OUT NEW DRUGS AND THERANOS'S
11:42AM 16 TESTING SYSTEM WAS USED IN ORDER TO MEASURE THE IMPACT ON THE
11:42AM 17 CLINICAL STUDIED PATIENTS.
11:42AM 18 THERANOS GOT PAID FOR THIS WORK. SOME OF THE
11:42AM 19 PHARMACEUTICALS CAME BACK TO DO MORE. EVEN PFIZER. THEY CAME
11:42AM 20 BACK. THEY WANTED TO DO MORE BUSINESS WITH THERANOS. THAT'S
11:42AM 21 WHAT YOU'RE GOING TO LEARN HERE IN THIS TRIAL.
11:42AM 22 NOW, ULTIMATELY SUNNY DID JOIN THERANOS IN 2009, SEPTEMBER
11:42AM 23 OF 2009 TO BE EXACT. BUT YOU'RE GOING TO LEARN HE JOINED
11:42AM 24 THERANOS BECAUSE HE BELIEVED IN THERANOS'S TECHNOLOGY AND THE
11:42AM 25 GROUNDBREAKING MISSION. HE DIDN'T JOIN THERANOS BECAUSE

11:43AM 1 ELIZABETH WAS HIS GIRLFRIEND. THAT'S NOT HOW IT WORKED.

11:43AM 2 AND WHAT YOU'RE GOING TO LEARN IN THIS TRIAL IS THAT FIRST
11:43AM 3 SUNNY'S CONNECTION AND RELATION WITH THERANOS STARTED IN AUGUST
11:43AM 4 OF 2009. THE COMPANY NEEDED MONEY, AND WHAT SUNNY DID IS SUNNY
11:43AM 5 ULTIMATELY GUARANTEED A LOAN, A \$10 MILLION LOAN TO START TO
11:43AM 6 HELP THERANOS TO CONTINUE BUSINESS SO THEY COULD PAY THEIR
11:43AM 7 EMPLOYEES, GET HEALTH INSURANCE FOR THEIR EMPLOYEES, AND
11:43AM 8 CONTINUE TO GROW AND DEVELOP THE BUSINESS. THAT'S HOW SUNNY
11:43AM 9 GOT STARTED WITH THERANOS.

11:43AM 10 AND WHAT HAPPENED WAS BEFORE HE GUARANTEED THE LOAN FOR
11:43AM 11 THERANOS, SUNNY DID HIS HOMEWORK. HE DID HIS DUE DILIGENCE,
11:43AM 12 INVESTIGATED THE COMPANY. HE DIDN'T SET ASIDE \$10 MILLION OF
11:43AM 13 HIS OWN MONEY SO THERANOS COULD GET A LOAN BECAUSE ELIZABETH
11:43AM 14 WAS HIS GIRLFRIEND. THAT'S NOT WHAT HAPPENED. THIS IS A
11:43AM 15 BUSINESS TRANSACTION.

11:43AM 16 SUNNY IS AN ENTREPRENEUR AND A BUSINESSMAN. SO HE DID HIS
11:43AM 17 DUE DILIGENCE FIRST.

11:43AM 18 AND PART OF THAT DUE DILIGENCE WAS RECEIVING FROM
11:44AM 19 ELIZABETH, FROM THE SCIENTISTS AT THERANOS, INFORMATION ABOUT
11:44AM 20 THE COMPANY, ABOUT THE TECHNOLOGY, REPORTS ABOUT SUMMARIZING
11:44AM 21 THE TECHNOLOGY, REPORTS FROM SOME OF THOSE PHARMACEUTICAL
11:44AM 22 STUDIES THAT THERANOS HAD DONE, REPORTS REGARDING THE TESTS
11:44AM 23 THAT HAD BEEN DEVELOPED ON THEIR PLATFORM, ALL PART OF SUNNY'S
11:44AM 24 HOMEWORK SO HE COULD LEARN WHETHER HE WANTED TO GUARANTEE A
11:44AM 25 LOAN FOR ELIZABETH'S COMPANY.

1 AND SOME OF THAT WORK INCLUDED REVIEWING THE BACKGROUNDS,
2 THE TEAM OF SCIENTISTS AND ENGINEERS THAT ELIZABETH ASSEMBLED
3 AT THERANOS BEFORE SUNNY HAD ANYTHING TO DO WITH THE COMPANY.

4 PEOPLE LIKE DR. IAN GIBBONS. YOU'RE GOING TO HEAR A
5 LITTLE BIT ABOUT HIM THIS MORNING OR THIS AFTERNOON, PRETTY
6 SOON.

7 DR. DANIEL YOUNG, M.I.T. TRAINED, PH.D., ALL RIGHT PART OF
8 ELIZABETH'S TEAM BEFORE SUNNY HAD ANYTHING TO DO WITH THE
9 COMPANY.

10 AS A RESULT OF THIS BACKGROUND WORK THAT SUNNY DID, AN
11 INVESTIGATION, HE DID GUARANTEE THE LOAN.

12 IN AUGUST OF 2009 SUNNY GUARANTEED THE LOAN, A \$10 MILLION
13 LINE OF CREDIT SO THERANOS COULD PAY ITS BILLS, PAY ITS
14 EMPLOYEES, PAY THEIR HEALTH CARE, AND CONTINUE IN OPERATION.

15 AND TO DO THAT, SUNNY HAD TO SET, SET \$10 MILLION OF HIS
16 OWN MONEY ASIDE AT THE BANK, KIND OF LIKE IN A LOCKBOX, AND
17 THEN THE BANK LOANED THERANOS THE MONEY.

18 AND THE \$10 MILLION LINE OF CREDIT WAS INCREASED TO
19 \$13 MILLION LATER ON SO THE COMPANY COULD CONTINUE IN
20 OPERATION.

21 NOW, WHAT YOU'RE ALSO GOING TO LEARN IS THAT SUNNY HIMSELF
22 PURCHASED ALMOST \$5 MILLION OF HIS OWN MONEY IN THERANOS STOCK
23 IN 2010 AND 2011.

24 AND YOU'RE GOING TO LEARN THAT SUNNY DID THAT BECAUSE HE
25 BELIEVED IN THE TECHNOLOGY, IN THE COMPANY, IN THE VISION.

1 BETWEEN THE LOAN OF THE \$13 MILLION AND THE INVESTMENT,
2 SUNNY MADE AVAILABLE TO THERANOS ALMOST \$18 MILLION TO KEEP IN
3 BUSINESS, TO KEEP PAYING THEIR EMPLOYEES, AND TO GROW AND
4 DEVELOP THE TECHNOLOGY. THAT'S WHAT THE EVIDENCE IS GOING TO
5 SHOW.

6 AND AT SOME POINT IN TIME YOU HEARD THE GOVERNMENT
7 REFERENCE SUNNY'S STOCK MAY HAVE BEEN WORTH HALF A BILLION
8 DOLLARS. IT WAS WORTH A LOT OF MONEY.

9 BUT WHAT YOU'RE GOING TO LEARN DURING THIS TRIAL, SUNNY
10 NEVER SOLD A SINGLE SHARE OF STOCK, EVEN THOUGH HE COULD HAVE.
11 HE COULD HAVE MADE TENS OF MILLIONS, HUNDREDS OF MILLIONS OF
12 DOLLARS AND STILL BEEN AN OWNER IN THERANOS, BUT HE NEVER DID
13 BECAUSE HE BELIEVED IN THE COMPANY, HE BELIEVED IN THE
14 TECHNOLOGY, AND HE BELIEVED IN THE FUTURE OF WHAT THERANOS
15 COULD OFFER TO THE PUBLIC. THAT'S WHAT YOU'RE GOING TO LEARN
16 IN THIS TRIAL.

17 NOW, ULTIMATELY, AS I SAID BEFORE, SUNNY DID JOIN
18 THERANOS, AND HE JOINED THEM BECAUSE HE BELIEVED IN THE COMPANY
19 AND ITS MISSION.

20 BUT SUNNY JOINED THERANOS IN SEPTEMBER OF 2009 NOT AS THE
21 PRESIDENT, NOT AS THE CHIEF OPERATING OFFICER. HE WASN'T MADE
22 PRESIDENT AND COO BECAUSE ELIZABETH WAS HIS GIRLFRIEND.

23 SUNNY JOINED THERANOS IN 2009 AS AN EMPLOYEE. AND WHEN HE
24 JOINED THERANOS AS AN EMPLOYEE SERVING ON THE BOARD AND SERVING
25 ELIZABETH, HE AGREED TO JUST WORK FOR A DOLLAR A YEAR. AND THE

11:47AM 1 REASON THAT SUNNY AGREED TO THAT IS BECAUSE HE DIDN'T WANT
11:47AM 2 INVESTOR MONEY GOING TO PAY EXECUTIVES LIKE HIM. HE WANTED
11:47AM 3 INVESTOR MONEY TO GO TO PAY TO DEVELOP THE TECHNOLOGY AND THE
11:47AM 4 BUSINESS. THAT'S WHAT YOU'RE GOING TO LEARN. BECAUSE HE
11:47AM 5 BELIEVED IN THE TECHNOLOGY. THAT'S WHAT THE EVIDENCE IS GOING
11:47AM 6 TO SHOW.

11:47AM 7 NOW, ULTIMATELY THE BOARD, THE BOARD OF DIRECTORS WHO
11:47AM 8 CONTROLLED THE COMPANY DIDN'T AGREE TO THAT. THEY REQUIRED
11:47AM 9 SUNNY TO TAKE A SALARY. SO, YES, HE MADE A SALARY OF \$99,000 A
11:47AM 10 YEAR FOR MOST OF THE TIME HE WAS AT THERANOS. THAT'S ALL HE
11:48AM 11 EVER GOT FROM THERANOS. THAT'S WHAT THE EVIDENCE WILL SHOW.

11:48AM 12 SUNNY NEVER MISUSED OR TOOK A SINGLE DOLLAR OF INVESTOR
11:48AM 13 FUNDS.

11:48AM 14 NOW, YOU'LL HEAR IN THIS TRIAL FROM SOME EMPLOYEES, SOME
11:48AM 15 WITNESSES WHO WILL TALK ABOUT NONDISCLOSURE AGREEMENTS, THAT
11:48AM 16 THEY WERE REQUIRED TO SIGN NONDISCLOSURE AGREEMENTS BY
11:48AM 17 THERANOS.

11:48AM 18 AND WHAT YOU'LL LEARN ALSO IS THAT SUNNY SIGNED A
11:48AM 19 NONDISCLOSURE AGREEMENT WHEN HE JOINED THERANOS. AND THE
11:48AM 20 REASON THAT SUNNY SIGNED A NONDISCLOSURE AGREEMENT WHEN HE
11:48AM 21 JOINED THERANOS WAS TO PROTECT THE COMPANY'S TRADE SECRETS AND
11:48AM 22 ASSETS.

11:48AM 23 NOW, TRADE SECRET IS THE TECHNOLOGY, THE METHODS, THE
11:48AM 24 SCIENCE, THE CHEMISTRY THAT THE COMPANY DEVELOPED TO DO THEIR
11:48AM 25 FINGERSTICK BLOOD TESTING.

11:48AM 1 TRADE SECRETS ARE WHAT INVESTORS ACTUALLY OWNED. THAT'S
11:48AM 2 THEIR PROPERTY. THAT'S THEIR ASSET, AND THERANOS REQUIRED
11:48AM 3 EMPLOYEES TO SIGN NONDISCLOSURE AGREEMENTS SO EMPLOYEES
11:49AM 4 WOULDN'T LEAK OUT TRADE SECRETS WHERE A COMPETITOR COULD TAKE
11:49AM 5 THE INFORMATION AND USE IT AGAINST THERANOS AND DRIVE THEM OUT
11:49AM 6 OF BUSINESS.

11:49AM 7 SO SUNNY, JUST LIKE EVERY OTHER EMPLOYEE, SIGNED A
11:49AM 8 NONDISCLOSURE AGREEMENT TO PROTECT THERANOS, TO PROTECT
11:49AM 9 THERANOS'S INVESTORS.

11:49AM 10 NOW, ULTIMATELY SUNNY DID BECOME PRESIDENT OF THERANOS,
11:49AM 11 AND THAT HAPPENED AFTER JULY OF 2010.

11:49AM 12 ABOUT A YEAR LATER THERANOS PAID BACK THAT LOAN, SO SUNNY
11:49AM 13 GOT HIS MONEY BACK FROM THE BANK, IT WAS FREED UP, AND HE COULD
11:49AM 14 DO WHAT HE WANTED WITH IT AT THAT POINT.

11:49AM 15 AND THE NEXT MONTH THE BOARD OF DIRECTORS OFFERED SUNNY
11:49AM 16 THE JOB OF PRESIDENT AND CHIEF OPERATING OFFICER OF THERANOS.
11:49AM 17 AND THE BOARD OF DIRECTORS APPROVED SUNNY AS PRESIDENT AND
11:49AM 18 CHIEF OPERATING OFFICER OF THERANOS.

11:49AM 19 SUNNY DID NOT BECOME PRESIDENT OF THERANOS BECAUSE
11:49AM 20 ELIZABETH WAS HIS GIRLFRIEND. THAT'S NOT WHAT THE EVIDENCE
11:49AM 21 WILL SHOW, AND THAT'S NOT WHAT YOU WILL LEARN IN THIS TRIAL.

11:50AM 22 IN FACT, IN 2010 ELIZABETH HOLMES, SHE WAS THE FOUNDER OF
11:50AM 23 THERANOS, CORRECT. SHE DIDN'T CONTROL THE COMPANY.

11:50AM 24 THE PEOPLE I SHOWED YOU ON THE BOARD, THOSE EARLY
11:50AM 25 INVESTORS WHO INVESTED ALL OF THEIR MONEY, THEY CONTROLLED THE

11:50AM 1 VOTING SHARES OF THERANOS STOCK AT THIS TIME. THEY ARE THE
11:50AM 2 ONES WHO MADE SUNNY PRESIDENT OF THERANOS, NOT ELIZABETH.
11:50AM 3 THAT'S WHAT YOU'RE GOING TO LEARN IN THIS TRIAL.

11:50AM 4 NOW, I'M GOING TO SHIFT GEARS A LITTLE BIT AND TALK ABOUT
11:50AM 5 SOME OF THE EVIDENCE THAT WE BELIEVE IS GOING TO SHOW THAT
11:50AM 6 SUNNY DID NOT MISLEAD INVESTORS, HE DID NOT MISLEAD PATIENTS OF
11:50AM 7 THE CAPABILITIES OF THERANOS'S TECHNOLOGY.

11:50AM 8 AND SOME OF THE EVIDENCE THAT YOU'RE GOING TO HEAR AND SEE
11:50AM 9 IS GOING TO INCLUDE FIRST, LIKE I SAID, THERANOS'S SCIENTISTS
11:50AM 10 DEVELOPED HUNDREDS OF FINGERSTICK TESTS ON THERANOS'S
11:51AM 11 TECHNOLOGY; THERANOS ALSO GAVE -- YOU HEARD FROM THE GOVERNMENT
11:51AM 12 THE RELATIONSHIP BETWEEN THERANOS AND WALGREENS AND THE
11:51AM 13 BUSINESS OF MAYBE ROLLING OUT THERANOS TESTING CENTERS IN
11:51AM 14 WALGREENS NATIONWIDE.

11:51AM 15 AS A PART OF THAT RELATIONSHIP, THERANOS GAVE WALGREENS
11:51AM 16 TESTING DEVICES, STARTING IN SEPTEMBER OF 2010. AND WALGREENS
11:51AM 17 USED THEM BEFORE THEY EVER PAID A DIME TO THERANOS. WALGREENS
11:51AM 18 KNEW EXACTLY WHAT THERANOS'S TECHNOLOGY COULD DO.

11:51AM 19 YOU'RE ALSO GOING TO LEARN THAT IN THE SUMMER OF 2015 THE
11:51AM 20 FOOD AND DRUG ADMINISTRATION, THE FEDERAL GOVERNMENT AGENCY
11:51AM 21 RESPONSIBLE FOR OVERSEEING THE SAFETY AND EFFICACY OF MEDICAL
11:51AM 22 DEVICES, APPROVED A TEST OF HERPES SIMPLEX VIRUS TEST, RUN ON
11:51AM 23 THERANOS'S OWN PRIORITY TECHNOLOGY, AND IT CONFIRMED THAT THE
11:51AM 24 TECHNOLOGY MET THE FDA STANDARDS FOR ACCURACY AND SAFETY.
11:52AM 25 THAT'S WHAT YOU'RE GOING TO HEAR AND LEARN IN THIS TRIAL.

11:52AM 1 IN ADDITION, YOU'RE GOING TO LEARN THAT, YES, THERANOS
11:52AM 2 USED MODIFIED COMMERCIAL DEVICES TO DO FINGERSTICK TESTING JUST
11:52AM 3 LIKE THEY COULD DO WITH THEIR OWN PROPRIETARY DEVICE.

11:52AM 4 BUT WHAT YOU'RE GOING TO LEARN IN THIS TRIAL IS THAT USE
11:52AM 5 OF THE MODIFIED COMMERCIAL DEVICES CAME ABOUT AS A RESULT OF
11:52AM 6 CHANGES IN THE RELATIONSHIP WITH WALGREENS, CHANGES IN THE
11:52AM 7 CONTRACTS. YOU'RE GOING TO HEAR THERE ARE MULTIPLE CONTRACTS
11:52AM 8 WITH WALGREENS, AND THAT WAS THE DECISION, A BUSINESS DECISION
11:52AM 9 UNTIL THE FDA APPROVAL WAS OBTAINED SO THAT THEY COULD PUT
11:52AM 10 ANALYZERS IN WALGREENS STORES.

11:52AM 11 THAT'S WHAT THE EVIDENCE IS GOING TO SHOW, AND THAT'S WHAT
11:52AM 12 YOU'RE GOING TO LEARN.

11:52AM 13 NOW, AS I MENTIONED, SUNNY INVESTED ALMOST \$5 MILLION OF
11:52AM 14 ITS OWN MONEY IN THERANOS BECAUSE HE BELIEVED IN THE
11:52AM 15 TECHNOLOGY, AND THAT BELIEF CAME FROM THE SCIENTISTS AND
11:52AM 16 ENGINEERS, THE TEAM THAT ELIZABETH ASSEMBLED ALL BEFORE SUNNY
11:52AM 17 HAD ANYTHING TO DO WITH THERANOS.

11:53AM 18 SUNNY WAS TAUGHT ABOUT THE TECHNOLOGY BY THE SCIENTISTS,
11:53AM 19 AND THAT TIME PERIOD STARTED -- SUNNY JOINED IN SEPTEMBER OF
11:53AM 20 2009 -- SO IT WAS LATE 2009 INTO 2010 IS THE TIME PERIOD THAT
11:53AM 21 I'M TALKING ABOUT.

11:53AM 22 FOR EXAMPLE, YOU SEE UP ON THE SCREEN AN EMAIL FROM ONE OF
11:53AM 23 THOSE SCIENTISTS WHO WORKED AT THERANOS WHO DEVELOPED TESTS AND
11:53AM 24 HER NAME WAS SUREKHA GANGADKHEDKAR.

11:53AM 25 AND HERE SHE SENDS AN EMAIL TO SUNNY REPORTING TO SUNNY AN

11:53AM 1 ASSAY DEVELOPMENT STRATEGY -- YOU WERE TOLD BY THE GOVERNMENT
11:53AM 2 "ASSAY" IS KIND OF EQUIVALENT TO A TEST -- AN ASSAY DEVELOPMENT
11:53AM 3 STRATEGY FOR DEVELOPING NEW TESTS ON THERANOS'S TECHNOLOGY.
11:53AM 4 THIS IS THE BEGINNING OF A NEW PROCESS AT THERANOS WHERE THEY
11:53AM 5 ARE BUILDING UP, RAMPING UP, HIRING NEW EMPLOYEES, AND
11:53AM 6 DEVELOPING NEW TESTS.

11:53AM 7 AND IN THIS TIME PERIOD IN 2010 THERANOS SCIENTISTS, NOT
11:53AM 8 ELIZABETH, THE SCIENTISTS TOLD SUNNY THAT THERANOS'S TECHNOLOGY
11:53AM 9 COULD DO ALL FOUR CATEGORIES OF COMMONLY USED BLOOD TESTING.
11:54AM 10 THAT'S WHAT THE EVIDENCE IS GOING TO SHOW.

11:54AM 11 ONE OF THOSE SCIENTISTS WAS DR. IAN GIBBONS. HE WAS THE
11:54AM 12 SENIOR CHIEF SCIENTIST AT THERANOS IN 2010 AND WAS A PART OF
11:54AM 13 ELIZABETH'S TEAM BEFORE SUNNY HAD ANYTHING TO DO WITH THE
11:54AM 14 COMPANY.

11:54AM 15 AND IN A COMMUNICATIONS FROM DR. GIBBONS AND THE
11:54AM 16 SCIENTISTS AT THERANOS TO ELIZABETH AND SUNNY, DR. GIBBONS
11:54AM 17 REPORTED THAT THEY, THE SCIENTISTS, FIGURED OUT HOW TO MAKE
11:54AM 18 THERANOS'S 4.0 SYSTEM CAPABLE OF PERFORMING ANY MEASUREMENT IN
11:54AM 19 A DISTRIBUTED SETTING.

11:54AM 20 NOW, WHAT DOES THAT MEAN, "ANY MEASUREMENT IN A
11:54AM 21 DISTRIBUTED SETTING"?

11:54AM 22 IN PLAIN ENGLISH, WHAT DR. GIBBONS IS REPORTING TO SUNNY
11:54AM 23 AND ELIZABETH IS THAT THEY, THE SCIENTISTS, HAVE FIGURED OUT
11:54AM 24 HOW TO MAKE THE THERANOS'S TECHNOLOGY CAPABLE OF DOING ALL FOUR
11:54AM 25 FAMILIES OF TESTS COMMONLY USED BECAUSE PRIOR TO THIS TIME,

11:54AM 1 BACK IN 2009 AND EVEN BEFORE THEN WHEN THERANOS DID BUSINESS
11:55AM 2 WITH THE PHARMACEUTICAL COMPANIES, THERANOS'S TECHNOLOGY, THE
11:55AM 3 3.0 SYSTEM, AND LATER THE 3.5, DID ONE FAMILY OR CATEGORY OF
11:55AM 4 TESTS CALLED IMMUNOASSAYS. IT'S ONE LANE. THEY COULD DO A LOT
11:55AM 5 OF TESTS IN THAT LANE, BUT IT'S JUST ONE LANE.

11:55AM 6 THE BREAKTHROUGH HERE THAT DR. GIBBONS IS REPORTING IS
11:55AM 7 THERANOS'S NEW SYSTEM WAS GOING TO BE ABLE TO DO FOUR
11:55AM 8 CATEGORIES OF TESTS: THE IMMUNOASSAYS AND THREE OTHERS.
11:55AM 9 THAT'S THE CHANGE GOING FORWARD.

11:55AM 10 AND THAT BREAKTHROUGH CONTINUED. BY OCTOBER OF 2010
11:55AM 11 GIBBONS AND THE SCIENTISTS REPORTED TO SUNNY FURTHER
11:55AM 12 DEVELOPMENTS IN THIS BREAKTHROUGH.

11:55AM 13 AND BY THAT TIME GIBBONS HAD REPORTED THAT THE SCIENTISTS
11:55AM 14 HAD FIGURED OUT HOW THE NEW DEVICE, THE 4.0, HAD DEMONSTRATED
11:55AM 15 FULLY EQUIVALENT TO LAB METHODS AND THAT HE BELIEVED WE HAVE
11:55AM 16 ALSO SHOWN AN ABILITY TO WORK IN ALL ASSAY AREAS AND GAVE HIS
11:56AM 17 VIEW THAT THEY COULD DO TESTING IN ALL FOUR CATEGORIES OF
11:56AM 18 TESTING: NUCLEIC ACID, CYTOMETRY, GENERAL CHEMISTRY, AND
11:56AM 19 IMMUNOASSAY. THAT WAS THE BREAKTHROUGH, AND I'LL EXPLAIN WHAT
11:56AM 20 THAT MEANS IN A COUPLE OF MINUTES.

11:56AM 21 IT'S A NOT CHEMISTRY TEST, BUT I THINK IT'S IMPORTANT THAT
11:56AM 22 YOU UNDERSTAND WHAT THE BREAKTHROUGH MEANT BECAUSE IT MEANT A
11:56AM 23 LOT, AND IT WAS IMPORTANT TO SUNNY'S DECISION REGARDING HIS OWN
11:56AM 24 INVESTMENTS IN THERANOS AND ALL OF THE WORK THAT THEY DID GOING
11:56AM 25 FORWARD.

11:56AM 1 IN THE 2011 TO 2013 TIME PERIOD AFTER GIBBONS REPORTED THE
11:56AM 2 BREAKTHROUGH TO SUNNY AND ELIZABETH ABOUT THE TECHNOLOGY,
11:56AM 3 THERANOS'S SCIENTISTS, NOT SUNNY AND NOT ELIZABETH, THE
11:56AM 4 SCIENTISTS DEVELOPED HUNDREDS OF NEW TESTS ON THERANOS'S
11:56AM 5 FINGERSTICK TECHNOLOGY, THE 4.0 SYSTEM.

11:56AM 6 IN THAT TIME PERIOD THERANOS RAMPED UP HIRING MORE
11:56AM 7 SCIENTISTS TO DO THIS WORK. FOUR TEAMS OF SCIENTISTS, ONE FOR
11:56AM 8 EACH CATEGORY.

11:56AM 9 ONE OF THE CATEGORIES WAS CALLED NUCLEIC ACID
11:56AM 10 AMPLIFICATION.

11:56AM 11 WHEN YOU THINK OF NUCLEIC ACID AMPLIFICATION, THINK ABOUT
11:57AM 12 A COVID PCR TEST THAT MANY OF YOU HAVE BEEN TAKING FOR THE LAST
11:57AM 13 TWO YEARS. THERANOS WAS DOING NUCLEIC ACID AMPLIFICATION
11:57AM 14 TESTING TEN YEARS AGO. THAT WAS WHAT THE SCIENTISTS WERE
11:57AM 15 WORKING ON A DEVELOPING AFTER GIBBONS REPORTED THE
11:57AM 16 BREAKTHROUGH.

11:57AM 17 THERANOS ALSO HAD A CYTOMETRY TEAM OF SCIENTISTS
11:57AM 18 DEVELOPING TESTS ON THE NEW DEVICE.

11:57AM 19 WHEN YOU HEAR "CYTOMETRY," THINK CELL, RED BLOOD CELL,
11:57AM 20 WHITE BLOOD CELL. THOSE ARE THE TYPES OF TEST IN CYTOMETRY.
11:57AM 21 THEY WERE DEVELOPING NEW TESTS ON THERANOS'S NEW SYSTEM.

11:57AM 22 THERE WAS ALSO A GENERAL CHEMISTRY TEAM DEVELOPING TESTS.

11:57AM 23 THIS IS A BIG FAMILY OF TESTS, SOME OF THE MOST COMMONLY
11:57AM 24 USED TESTS FOR GENERAL CHEMISTRY. THINK POTASSIUM, SODIUM,
11:57AM 25 CALCIUM TESTS.

1 A TEAM OF SCIENTISTS WHO WORKED AT THERANOS DEVELOPING
2 THESE TESTS AS WELL, IN ADDITION TO THE IMMUNOCHEMISTRY OR
3 IMMUNOASSAY TEAM THAT ALWAYS EXISTED AT THERANOS AND HAD BEEN
4 DOING SOME OF THAT PHARMACEUTICAL WORK THAT THE GOVERNMENT
5 REFERENCED PRIOR TO 2009.

6 THIS IS THE BREAKTHROUGH THAT WAS HAPPENING BETWEEN THE
7 TIME PERIOD THAT SUNNY JOINED THERANOS AND THE ROLLOUT AND
8 FURTHER BUSINESS WITH WALGREENS THAT TOOK PLACE. AND IN THESE
9 YEARS, IN THE 2011 TO 2013 TIME PERIOD, THOSE SCIENTISTS WERE
10 REPORTING OUT TO SUNNY AND ELIZABETH THAT THEY COMPLETED
11 ASSAYS, NEW TESTS, HUNDREDS OF NEW TESTS.

12 FOR EXAMPLE, THE GENERAL CHEMISTRY TEAM THAT I TALKED
13 ABOUT, 55 NEW TESTS COMPLETED BY SEPTEMBER OF 2012.

14 THE ELISA TEAM, THAT'S THE IMMUNOCHEMISTRY TEAM, 68 TESTS
15 DEVELOPED, COMPLETED BY NOVEMBER OF 2012.

16 THE NUCLEIC ACID AMPLIFICATION TEAM, 76 NEW TESTS BY
17 DECEMBER OF 2013, ALL BEING REPORTED UP TO SUNNY, THE
18 SCIENTISTS SAYING THEY COMPLETED AND DEVELOPED NEW TESTS.

19 THAT'S WHAT SUNNY WAS BEING TOLD, AND THAT'S WHAT HE
20 UNDERSTOOD, AND THAT'S WHAT THE EVIDENCE IS GOING TO SHOW.

21 AND THIS TECHNOLOGY, THIS WAS GROUNDBREAKING STUFF. NO
22 ONE ELSE WAS DOING THIS AT THE TIME AND FOR THAT REASON
23 THERANOS SOUGHT TO PROTECT THIS NEW TECHNOLOGY.

24 THERANOS OBTAINED 176 PATENTS PROTECTING THE HARDWARE,
25 PROTECTING THE SOFTWARE, AND PROTECTING THE TESTING METHODS

DEVELOPED FOR THERANOS'S FINGERSTICK TECHNOLOGY.

AS I MENTIONED, THERANOS DEVELOPED OVER 200 SMALL SAMPLE FINGERSTICK TESTS USING THE 4.0 SYSTEM IN THESE -- ALL FOUR CATEGORIES OF TESTING.

IN ADDITION TO THAT, THERANOS'S SCIENTISTS DEVELOPED 70 FINGERSTICK TESTS, SOME OF THE MOST COMMONLY USED FINGERSTICK TESTS THAT WERE VALIDATED BY MEDICAL DOCTORS AND SCIENTISTS IN THERANOS'S CLINICAL LAB TO USE ON PATIENTS.

IT WASN'T SUNNY WHO VALIDATED THOSE TESTS TO USE ON PATIENTS, AND NOT ELIZABETH. IT WAS THE SCIENTISTS. THAT'S WHAT YOU'RE GOING TO LEARN ABOUT IN THIS TRIAL.

AND THIS WAS TRANSFORMATIVE. NO OTHER LAB EVER OFFERED SUCH A BROAD MENU OF FINGERSTICK TESTS TO THE PUBLIC THAN THERANOS DID AT THIS TIME. THAT'S WHAT YOU'RE GOING TO LEARN IN THIS TRIAL.

NOW, THESE TECHNOLOGICAL BREAKTHROUGHS THAT I JUST DESCRIBED THAT HAPPENED AT THERANOS IN THIS 2011 TO 2013 TIME PERIOD ALSO LED TO DISCUSSIONS BETWEEN THERANOS AND RETAIL GIANTS WALGREENS AND SAFEWAY ABOUT POTENTIAL PARTNERSHIPS.

AND THE RELATIONSHIP WITH WALGREENS STARTED IN THE SPRING OF 2010 THERE WAS A GUY AT WALGREENS NAMED DR. JAY ROSAN. HE WAS THE VICE PRESIDENT OF INNOVATION AT WALGREENS, AND HE INVITED SUNNY AND ELIZABETH TO A MEETING AT WALGREENS HEADQUARTERS IN ILLINOIS.

AS A PART OF THESE DISCUSSIONS BETWEEN WALGREENS AND

12:01PM 1 SAFEWAY ABOUT A POTENTIAL PARTNERSHIP, WALGREENS RETAINED
12:01PM 2 EXPERTS AT JOHNS HOPKINS MEDICINE TO EVALUATE THERANOS'S
12:01PM 3 TECHNOLOGY, AND THOSE EXPERTS CONCLUDED THAT THERANOS HAD HAD A
12:01PM 4 SPECIAL STRENGTH OF ACCURACY. AND THIS HAPPENED IN APRIL OF
12:01PM 5 2010.

12:01PM 6 AGAIN, JOHNS HOPKINS WAS HIRED BY WALGREENS TO EVALUATE
12:01PM 7 THE TECHNOLOGY. AND JOHN HOPKINS REPORTED AND CONCLUDED THAT A
12:01PM 8 SPECIAL STRENGTH OF THERANOS'S TECHNOLOGY WAS ACCURACY;
12:01PM 9 FLEXIBILITY, IT CAN BE TAILORED TO A VARIETY OF NEEDS IN
12:01PM 10 CLINICAL VENUES; AND THEY AGREED NO MAJOR WEAKNESSES
12:01PM 11 IDENTIFIED. THIS IS JOHNS HOPKINS REPORTING TO WALGREENS AND
12:01PM 12 SUNNY AND ELIZABETH THEIR VIEWS OF THE TECHNOLOGY.

12:01PM 13 AND THESE DISCUSSIONS LED TO THE FIRST OF MANY AGREEMENTS
12:01PM 14 BETWEEN THERANOS AND WALGREENS. THIS IS JULY OF 2010.

12:02PM 15 AND THE FIRST CONTRACT, THE FIRST AGREEMENT WAS TO PUT
12:02PM 16 THERANOS TESTING MACHINES IN WALGREENS STORES NATIONWIDE AFTER
12:02PM 17 FDA APPROVAL. THAT WAS THE INITIAL BUSINESS PLAN.

12:02PM 18 SO, AGAIN, THIS IS THE FIRST OF MANY AGREEMENTS THAT WOULD
12:02PM 19 COME.

12:02PM 20 BUT THAT FIRST AGREEMENT IN JULY OF 2010 ALSO INCLUDED THE
12:02PM 21 CLAUSE, A TERM THAT REQUIRED WALGREENS TO PAY THERANOS
12:02PM 22 \$30 MILLION UPON SIGNATURE OF THE CONTRACT.

12:02PM 23 BUT YOU KNOW WHAT HAPPENED?

12:02PM 24 THERANOS NEVER ASKED FOR THE MONEY. SUNNY AND ELIZABETH
12:02PM 25 COULD HAVE BILLED WALGREENS AND WALGREENS WOULD HAVE BEEN

12:02PM 1 REQUIRED TO PAY THERANOS \$30 MILLION IN JULY OF 2010, BUT THEY
12:02PM 2 NEVER DID THAT BECAUSE THE WHOLE POINT OF THE RELATIONSHIP WITH
12:02PM 3 WALGREENS WAS NOT TO GET MONEY FROM WALGREENS.

12:02PM 4 THE POINT OF THE RELATIONSHIP WAS TO BUILD A PARTNERSHIP
12:02PM 5 TO DEVELOP AND EXPAND THERANOS TESTING NATIONWIDE.

12:03PM 6 NOW, REMEMBER THE CHARGE HERE. THE CHARGE HERE IS WIRE
12:03PM 7 FRAUD. THE ALLEGATION IS THAT SUNNY SCHEMED TO DECEIVE AND
12:03PM 8 CHEAT INVESTORS AND PARTNERS OUT OF THEIR MONEY.

12:03PM 9 THERANOS SIGNED A CONTRACT WITH WALGREENS. WALGREENS IS
12:03PM 10 OBLIGATED TO PAY THERANOS \$30 MILLION ON SIGNATURE. SUNNY
12:03PM 11 DIDN'T ASK FOR THE MONEY. THERANOS DIDN'T ASK FOR THE MONEY
12:03PM 12 BECAUSE IT WASN'T MONEY THAT THEY WERE INTERESTED IN. THEY
12:03PM 13 WERE INTERESTED IN THE PARTNERSHIP AND BUILDING A BUSINESS,
12:03PM 14 THAT'S WHAT THE EVIDENCE WILL SHOW.

12:03PM 15 AND AFTER THAT CONTRACT WAS SIGNED, THERANOS GAVE
12:03PM 16 WALGREENS THREE DEVICES, ANALYZERS. IN SEPTEMBER OF 2010 THEY
12:03PM 17 GAVE THEM CARTRIDGES. THEY TAUGHT THEM HOW TO USE THE
12:03PM 18 EQUIPMENT. AND AFTER THAT YOU'LL LEARN OVER THE NEXT COUPLE OF
12:03PM 19 YEARS THAT DR. JAY ROSAN AND OTHERS AT WALGREENS USED THE
12:03PM 20 TESTING EQUIPMENT. THEY USED IT ON THEMSELVES. THEY TESTED
12:03PM 21 OTHER EXECUTIVES AT WALGREENS. THEY DID IT FOR YEARS ALL
12:04PM 22 BEFORE WALGREENS EVER PAID ANY MONEY TO THERANOS.

12:04PM 23 SO THE EVIDENCE IS GOING TO SHOW NOT THAT WALGREENS WAS
12:04PM 24 DECEIVED ABOUT WHAT THERANOS TECHNOLOGY COULD DO. WALGREENS
12:04PM 25 HAD POSSESSION OF THERANOS TECHNOLOGY AND USED THERANOS

12:04PM 1 TECHNOLOGY BEFORE WALGREENS EVER GAVE A DIME TO THERANOS.

12:04PM 2 THAT'S WHAT THE EVIDENCE IS GOING TO SHOW.

12:04PM 3 NOW, I'M GOING TO SWITCH ISSUES A LITTLE BIT HERE AND TALK
12:04PM 4 ABOUT THERANOS'S USE OF COMMERCIAL DEVICES. ABSOLUTELY TRUE.

12:04PM 5 THE EVIDENCE IS GOING TO SHOW THAT THERANOS USED
12:04PM 6 COMMERCIAL DEVICES, TRADITIONALLY WHAT IS CALLED VENOUS DRAW,
12:04PM 7 VENOUS DRAW TESTING IN IT'S LABORATORIES. THERE'S NO DOUBT
12:04PM 8 ABOUT THAT AND NO DISPUTE ABOUT THAT.

12:04PM 9 BUT WHAT THE EVIDENCE IS ALSO GOING TO SHOW IS THAT
12:04PM 10 INVESTORS WERE NOT MISLED ABOUT THAT FACT. THAT'S WHAT THE
12:04PM 11 EVIDENCE WILL DEMONSTRATE.

12:04PM 12 AND SOME OF THAT EVIDENCE INCLUDES THE FACT THAT
12:04PM 13 INVESTORS, SOME OF WHOM ARE GOING TO TESTIFY HERE, ARE GOING TO
12:05PM 14 TELL YOU THAT THEY KNEW THERANOS USED VEIN DRAW TRADITIONAL
12:05PM 15 TESTING IN THEIR LAB.

12:05PM 16 YOU'RE ALSO GOING TO LEARN THAT THERANOS DISCLOSED ON ITS
12:05PM 17 WEBSITE THE FACT THAT IT USED VEIN DRAW COMMERCIAL TESTING IN
12:05PM 18 ITS LAB.

12:05PM 19 AND YOU'RE ALSO GOING TO LEARN AND SEE THAT THERANOS'S
12:05PM 20 TEST MENU WAS ON THE WEBSITE. SO ANYBODY AT ANY TIME COULD
12:05PM 21 HAVE SEEN EXACTLY HOW MANY TESTS THERANOS OFFERED TO THE
12:05PM 22 PUBLIC. INVESTORS COULD HAVE SEEN IT, PATIENTS COULD HAVE SEEN
12:05PM 23 IT, DOCTORS COULD SEE IT. ANYONE. THAT'S WHAT THE EVIDENCE
12:05PM 24 WILL DEMONSTRATE.

12:05PM 25 NOW, THE GOVERNMENT REFERENCED ONE CLASS OF WITNESSES THAT

12:05PM 1 YOU'RE GOING TO HEAR FROM. THOSE ARE INVESTORS, INCLUDING AN
12:05PM 2 INVESTOR FROM A HEDGE FUND IN SAN FRANCISCO CALLED PFM.

12:05PM 3 PFM WAS HEADED BY A GUY NAMED BRIAN GROSSMAN WHO WAS THE
12:05PM 4 CHIEF INVESTMENT OFFICER.

12:05PM 5 WE EXPECT GROSSMAN IS GOING TO TESTIFY, AND YOU'RE GOING
12:05PM 6 TO HEAR OR LEARN THAT TWO OF HIS TEAM MEMBERS THAT HELPED HIM
12:06PM 7 EVALUATE THE INVESTMENT DID GO AND GET TESTED. THEY GOT THE
12:06PM 8 FINGERSTICK FOR THE TEST THAT THEIR DOCTORS REQUESTED FROM
12:06PM 9 THERANOS.

12:06PM 10 BUT YOU'RE ALSO GOING TO LEARN THAT BRIAN GROSSMAN WALKED
12:06PM 11 INTO A WALGREENS STORE IN PALO ALTO IN JANUARY OF 2014 WITH A
12:06PM 12 PRESCRIPTION FROM HIS DOCTOR FOR A BLOOD TEST. HE GOT TESTED,
12:06PM 13 AND HE GOT A TRADITIONAL VEIN DRAW TEST BEFORE PFM AND BEFORE
12:06PM 14 GROSSMAN INVESTED. AND HE GOT A TRADITIONAL VEIN DRAW TEST
12:06PM 15 BECAUSE ONE OF THE TESTS HIS DOCTOR ORDERED WAS NOT ON THE
12:06PM 16 FINGERSTICK.

12:06PM 17 SO BEFORE PFM INVESTED, BRIAN GROSSMAN KNEW THAT THERANOS
12:06PM 18 USED COMMERCIAL DEVICES IN VEIN DRAW TESTING FOR SOME TESTS
12:06PM 19 THAT THERANOS COULD NOT DO ON THE FINGERSTICK. THAT'S WHAT YOU
12:06PM 20 WILL LEARN IN THIS TRIAL.

12:06PM 21 YOU'LL ALSO LEARN THAT AFTER PFM AND GROSSMAN INVESTED IN
12:06PM 22 FEBRUARY OF 2014, SUNNY HAD CONVERSATIONS WITH GROSSMAN ABOUT
12:07PM 23 THERANOS'S BUSINESS. THIS IS THE SAME TIME PERIOD THAT THE
12:07PM 24 GOVERNMENT ALLEGES THAT SUNNY WAS MISLEADING INVESTORS ABOUT
12:07PM 25 THE USE OF THE VEIN DRAW TESTING IN COMMERCIAL DEVICES.

1 IN THAT CONVERSATION SUNNY TOLD GROSSMAN THAT THE
2 PERCENTAGE OF PATIENTS COMING THROUGH WALGREENS STORES WHO ARE
3 GETTING VEIN DRAW TESTING AT WALGREENS STORES AND AT THERANOS.
4 THAT WAS DISCLOSED TO GROSSMAN AT THE SAME TIME THAT THE
5 GOVERNMENT CLAIMS THAT SUNNY WAS MISLEADING INVESTORS ABOUT
6 THAT FACT.

7 YOU'RE ALSO GOING TO LEARN THAT THERANOS DISCLOSED IT'S
8 USE OF VEIN DRAW TESTING AND COMMERCIAL DEVICES TO THE PUBLIC,
9 TO REGULATORS, AND TO ITS PARTNERS LIKE WALGREENS.

10 AND SOME OF THE EVIDENCE THAT YOU'RE GOING TO SEE INCLUDES
11 THE FACT THAT THE USE OF VEIN DRAW TESTING IN COMMERCIAL
12 DEVICES WAS DISCLOSED ON THERANOS'S WEBSITE.

13 AND WHAT YOU SEE UP ON THE SCREEN RIGHT NOW IS A SCREEN
14 SHOT FROM A PIECE OF THERANOS'S WEBSITE, AND IT DESCRIBES THE
15 FACT THAT INSTEAD OF A BIG, INTIMIDATING NEEDLE, OUR CERTIFIED
16 PHLEBOTOMIST CAN USE A TINY FINGERSTICK OR A MICRO SAMPLE FROM
17 A VENOUS DRAW.

18 BUT THEN THE WEBSITE DISCLOSED, "OCCASIONALLY A
19 VENIPUNCTURE MAY BE REQUIRED BASED ON THE LAB ORDER."

20 WHAT THAT MEANS AND WHAT'S THAT TELLING THE WORLD IS
21 OCCASIONALLY A VEIN DRAW AND COMMERCIAL TEST WILL BE REQUIRED
22 IF THE TEST THAT YOUR DOCTOR ORDERED IS NOT AVAILABLE ON THE
23 FINGERSTICK.

24 THAT WAS PUBLICLY DISCLOSED ON THERANOS'S WEBSITE.

25 YOU'RE ALSO GOING TO LEARN IN THE FALL OF 2013 THERANOS

12:08PM 1 AND SUNNY, THEY HAD A MEETING WITH THE FOOD AND DRUG
12:08PM 2 ADMINISTRATION WHERE THEY DISCLOSED ALL OF THEIR TESTING
12:08PM 3 METHODS, THE FINGERSTICK METHODS, THE VEIN DRAW TESTING
12:08PM 4 METHODS, AND THE DEVICES USED FOR THOSE TESTING METHODS
12:08PM 5 DISCLOSED TO REGULATORS.

12:08PM 6 YOU'RE ALSO GOING TO LEARN IN THE RELATIONSHIP WITH
12:08PM 7 WALGREENS THAT LASTED YEARS, THERE ARE PERIODIC MEETINGS,
12:09PM 8 SOMETIMES MONTHLY, SOMETIMES QUARTERLY, SUNNY WOULD PARTICIPATE
12:09PM 9 IN THEM. WALGREENS WAS TOLD THE PERCENTAGE OF PATIENTS COMING
12:09PM 10 THROUGH WALGREENS STORES WHO GOT VEIN DRAW TESTING RUN ON
12:09PM 11 COMMERCIAL DEVICES.

12:09PM 12 SO NOT ONLY DID WALGREENS HAVE THERANOS MACHINES AND KNOW
12:09PM 13 WHAT THEY COULD DO BEFORE THEY GAVE ANY MONEY TO THERANOS, THEY
12:09PM 14 WERE REGULARLY GETTING REPORTS OF THE PERCENTAGE OF PATIENTS
12:09PM 15 WHO WERE GETTING A VEIN DRAW TEST.

12:09PM 16 THE EVIDENCE IS GOING TO SHOW THAT WALGREENS WAS MISLED
12:09PM 17 ABOUT NOTHING.

12:09PM 18 IN ADDITION, I MENTIONED THERANOS'S TEST MENU IS ACTUALLY
12:09PM 19 PUBLISHED ON THE WEBSITE. YOU'LL SEE AN IMAGE OF THAT ON THE
12:09PM 20 SCREEN RIGHT NOW.

12:09PM 21 THE NUMBER OF TESTS RANGE FROM 150 TESTS IN EARLY 2014 UP
12:09PM 22 TO A MAXIMUM OF 269, AND IT VARIED JUST DEPENDING ON WHAT WAS
12:10PM 23 HAPPENING IN THE LAB.

12:10PM 24 AND THE REASON I MENTION THIS IS THAT YOU'RE GOING TO HEAR
12:10PM 25 FROM SOME INVESTORS WHO TALK ABOUT AND CLAIM THAT SUNNY TOLD

12:10PM 1 THEM THAT THERANOS COULD DO A THOUSAND TESTS ON ITS
12:10PM 2 FINGERSTICK. AND SOME OF THEM WILL SAY, WELL, NO, I WAS TOLD A
12:10PM 3 THOUSAND PCT CODES ON THE FINGERSTICK. AND THEY GO BACK AND
12:10PM 4 FORTH.

12:10PM 5 FIRST, THE NUMBER OF TESTS THAT THERANOS COULD DO IN TOTAL
12:10PM 6 WAS POSTED ON THE WEBSITE AT ALL TIMES, AND IT WAS NEVER MORE
12:10PM 7 THAN 269.

12:10PM 8 SECOND, WHEN YOU HEAR INVESTORS OR SOMEONE TALK ABOUT CPT
12:10PM 9 CODE IN THIS TRIAL, AND I THINK THEY MAY, A CPT CODE IS NOT A
12:10PM 10 TEST. A CPT CODE IS A BILLING CODE USED TO GET PAYMENT FROM
12:10PM 11 MEDICARE.

12:10PM 12 AND WHAT YOU'RE GOING TO LEARN IN THIS TRIAL, ONE TEST,
12:10PM 13 LET'S SAY A POTASSIUM TEST, AND A LAB WANTED TO GET REIMBURSED
12:10PM 14 FOR THAT POTASSIUM TEST, THERE MAY BE ONE CODE FOR POTASSIUM,
12:10PM 15 BUT POTASSIUM MAY ALSO TOUCH TWO, THREE, FOUR, FIVE CODES. SO
12:11PM 16 A THOUSAND CPT CODE CODES DOESN'T EQUAL A THOUSAND TESTS.
12:11PM 17 EQUALS A FEW HUNDRED.

12:11PM 18 AND YOU'RE GOING TO LEARN, AS I MENTIONED, THERANOS
12:11PM 19 DEVELOPED HUNDREDS OF TESTS ON ITS FINGERSTICK TECHNOLOGY.
12:11PM 20 THAT'S WHAT IT WAS CAPABLE OF DOING, AND THAT'S WHAT WAS
12:11PM 21 DEVELOPED BY THE SCIENTISTS.

12:11PM 22 SWITCHING GEARS AGAIN TO ADDRESS SOME OF THE ALLEGATIONS
12:11PM 23 THAT THE GOVERNMENT PRESENTED, A SUMMARY OF WHAT THEY BELIEVE
12:11PM 24 THE EVIDENCE IS GOING TO SHOW THAT PATIENTS AND INVESTORS WERE
12:11PM 25 MISLED ABOUT THE CAPABILITIES OF THERANOS'S TECHNOLOGY.

1 NOW, WHAT THE ALLEGATION IN THIS CASE IS, IS THAT
2 THERANOS'S TECHNOLOGY WAS NOT CAPABLE OF CONSISTENTLY PRODUCING
3 ACCURATE AND RELIABLE RESULTS. THAT'S THE ALLEGATION AT THE
4 CORE OF THIS CASE.

5 AND WHAT YOU'RE GOING TO LEARN IS THAT THE FOOD AND DRUG
6 ADMINISTRATION, THE AGENCY RESPONSIBLE FOR OVERSEEING THE
7 SAFETY AND THE EFFICACY OF MEDICAL DEVICES, INCLUDING BLOOD
8 TESTING MACHINES, FOUND THERANOS'S TECHNOLOGY MET THE FDA'S OWN
9 STANDARDS, AND THAT HAPPENED IN JULY OF 2015.

10 ON JULY 7TH THE FDA ISSUED WHAT WAS CALLED A CLEARANCE,
11 ALSO KNOWN AS AN APPROVAL OF AN HSV TEST, A HERPES SIMPLEX
12 VIRUS TEST, RUN ON THERANOS'S 4.0 SYSTEM. AND A WEEK LATER THE
13 FDA WENT A STEP FURTHER AND GRANTED A WAIVER FOR THAT TEST RUN
14 ON THAT TEST SYSTEM.

15 AND WHAT THAT MEANS IS THAT -- I PUT UP ON THE SCREEN,
16 THIS IS A LETTER FROM THE FDA TO THERANOS IN JULY OF 2015,
17 AFTER THERANOS SUBMITTED VOLUMINOUS DATA AND REPORTS TO FDA TO
18 TRY TO GET THE CLEARANCE.

19 AND IN THE LETTER THERANOS REPORTED TO THERANOS THAT THE
20 FDA DETERMINED THE DEVICE IS SUBSTANTIALLY EQUIVALENT TO
21 LEGALLY MARKETING PREDICATE DEVICES.

22 NOW, WHAT DOES THAT MEAN IN PLAIN ENGLISH. THAT'S THE FDA
23 SAYING THAT THERANOS'S DEVICE IS SUBSTANTIALLY EQUIVALENT TO
24 OTHER DEVICES RUNNING THAT BLOOD TEST THAT THE FDA ALREADY
25 APPROVED.

12:13PM 1 THAT'S THE FDA TELLING THERANOS YOUR DEVICE MEETS OUR FDA
12:13PM 2 STANDARDS FOR SAFETY AND EFFICACY THAT WE HAVE ALREADY
12:13PM 3 PREVIOUSLY APPROVED FOR OTHER DEVICES. THAT'S WHAT THE
12:13PM 4 EVIDENCE IS GOING TO SHOW.

12:13PM 5 A WEEK LATER THE FDA WENT EVEN FURTHER AND THEY GRANTED
12:13PM 6 WHAT WAS CALLED A WAIVER, AND A WAIVER IS FOR THE WHOLE TEST
12:13PM 7 SYSTEM: THAT'S FOR THE ANALYZER OR THE DEVICE, THAT'S THE
12:13PM 8 SOFTWARE, AND THAT'S ALSO THE BLOOD COLLECTION DEVICES AND
12:13PM 9 EQUIPMENT.

12:13PM 10 AND WHEN THE FDA GRANTED THE WAIVER, THAT WAS THE FDA
12:13PM 11 TELLING THERANOS YOUR DATA LOOKS SO GOOD THAT WE, THE FDA,
12:14PM 12 WE'RE SATISFIED THAT THERANOS'S DEVICE COULD BE PLACED IN A
12:14PM 13 WALGREENS STORE AND A NON-LAB TRAINED TECHNICIAN COULD RUN IT
12:14PM 14 ON A PATIENT, AND THE FDA BELIEVED THAT WAS SAFE AND THERE WAS
12:14PM 15 A VERY LOW LIKELIHOOD OF INACCURACY. THAT'S THE FDA, THE
12:14PM 16 FEDERAL GOVERNMENT'S OWN AGENCY RESPONSIBLE FOR MEDICAL DEVICES
12:14PM 17 TELLING THERANOS THAT THE FDA CONCLUDED THAT THEY MET THE FDA
12:14PM 18 STANDARDS.

12:14PM 19 AND AS APART OF THAT CLEARANCE AND WAIVER THAT WAS
12:14PM 20 OBTAINED IN SUMMER OF 2015, THERANOS SUBMITTED ANALYSIS OF OVER
12:14PM 21 13,000 BLOOD SAMPLES TO THE FDA TO SATISFY THE FDA AND TO GET
12:14PM 22 THE CLEARANCE AND APPROVAL.

12:14PM 23 13,754 SAMPLES, TO BE EXACT, RUN ON OVER 78 DEVICES TOOK A
12:14PM 24 MILLION MINUTES PLUS OF RUN TIME, TESTING TIME, AND THERANOS
12:15PM 25 GENERATED ALMOST 3,000 PAGES OF DOCUMENTATION AND REPORTS

12:15PM 1 PROVIDED TO THE FDA TO GET THE FDA TO GRANT THE APPROVAL AND
12:15PM 2 CLEARANCE.

12:15PM 3 THAT'S WHAT YOU'LL LEARN IN THIS TRIAL.

12:15PM 4 AND THAT'S THE FDA'S CLEARANCE OF THERANOS'S TECHNOLOGY.
12:15PM 5 NOT SIEMENS, NOT ANOTHER COMPANY'S, THAT'S THERANOS.

12:15PM 6 NOW, YOU'RE ALSO GOING TO LEARN THAT DURING THE TIME
12:15PM 7 PERIOD THAT THE LAB WAS IN OPERATION, THERANOS USED MODIFIED
12:15PM 8 COMMERCIAL DEVICES TO DO FINGERSTICK TESTING JUST LIKE THERANOS
12:15PM 9 COULD DO ON ITS EDISON DEVICE, ON ITS PROPRIETARY TECHNOLOGY.

12:15PM 10 BUT SUNNY DID NOT DECEIVE THE INVESTORS ABOUT THE USE OF
12:15PM 11 MODIFIED COMMERCIAL DEVICES.

12:15PM 12 THE USE OF MODIFIED COMMERCIAL DEVICES TO DO FINGERSTICK
12:15PM 13 TESTING CAME ABOUT AS A RESULT OF CHANGES TO THE WALGREENS
12:15PM 14 AGREEMENT AND BUSINESS MODEL AS YOU'LL SEE.

12:15PM 15 AND WHAT THOSE CHANGES WERE WAS IN THE SUMMER OF 2012, TWO
12:16PM 16 YEARS AFTER THE FIRST AGREEMENT, A NEW AGREEMENT, A NEW
12:16PM 17 CONTRACT, A NEW PLAN, A BUSINESS PLAN WAS DEVELOPED. INSTEAD
12:16PM 18 OF PUTTING THERANOS EQUIPMENT AND TESTING MACHINES IN WALGREENS
12:16PM 19 STORES NATIONWIDE, THE NEW PLAN JUST COLLECTS SAMPLES IN THOSE
12:16PM 20 STORES AND SHIP THEM ALL TO THE CENTRAL LAB AND PROCESS THEM
12:16PM 21 ALL AT THE CENTRAL LAB.

12:16PM 22 THE WALGREENS BUSINESS MODEL WITH THERANOS CHANGED IN THIS
12:16PM 23 TIME PERIOD. LIKE I SAID, THE ORIGINAL AGREEMENT PUT MACHINES
12:16PM 24 IN THE STORES. THE NEW AGREEMENT JUST COLLECTED THE BLOOD IN
12:16PM 25 THE STORES AND SHIPPED IT TO A CENTRAL LAB.

12:16PM 1 BUT WHAT THIS MEANT, WAS THAT IN THAT CENTRAL LAB YOU HAD
12:16PM 2 TO HAVE THE ABILITY TO PROCESS LOTS OF SAMPLES. AND AS YOU'RE
12:16PM 3 GOING TO LEARN, THERANOS'S DEVICE WASN'T MADE TO DO HIGH VOLUME
12:16PM 4 TESTING. IT WAS MADE TO BE PUT IN A STORE, IN A DOCTOR'S
12:16PM 5 OFFICE, IN A PERSON'S HOME TO DO LOW VOLUME TESTING.

12:16PM 6 THE CHANGE IN THE WALGREENS BUSINESS MODEL IS WHAT BROUGHT
12:17PM 7 ABOUT THE DECISION TO MODIFY COMMERCIAL DEVICES TO DO THE
12:17PM 8 FINGERSTICK TESTING UNTIL THE FDA APPROVAL COULD BE OBTAINED
12:17PM 9 FOR ALL OF THE TESTS TO PUT THE EQUIPMENT IN THE WALGREENS
12:17PM 10 STORES. THAT'S HOW THE MODIFIED COMMERCIAL DEVICES CAME ABOUT,
12:17PM 11 AND THAT STARTED IN THE SUMMER OF 2012 WITH THE NEW AGREEMENT.

12:17PM 12 AND LIKE I SAID, THE NEW AGREEMENT INCLUDED A NEW BUSINESS
12:17PM 13 PLAN TO COLLECT SAMPLES IN THE STORES, DON'T TEST IN THE
12:17PM 14 STORES, SHIP THEM TO A CENTRAL LAB AND DO THE TESTING THERE.
12:17PM 15 HIGH VOLUME. THAT WAS PERMITTED UNDER THE FEDERAL REGULATIONS
12:17PM 16 THAT GOVERNED LABORATORY TESTING.

12:17PM 17 THERE ARE TWO WAYS YOU CAN DO TESTING USING A PROPRIETARY
12:17PM 18 TEST LIKE THERANOS'S EQUIPMENT. YOU CAN GET FDA APPROVAL WHICH
12:17PM 19 WILL ALLOW YOU TO PUT IN THE LAB TO DO THE TESTING, OR YOU CAN
12:17PM 20 GET A WAIVER AND EVEN PUT IT IN THE STORE, OR YOU COULD HAVE
12:17PM 21 LAB EXPERTS VALIDATE THE TECHNOLOGY, VALIDATE THE TESTS,
12:18PM 22 CONFIRM THAT THEY'RE ACCURATE AND RELIABLE, AND THEN YOU CAN
12:18PM 23 USE YOUR OWN TECHNOLOGY WITHIN YOUR OWN LAB. IT'S CALLED AN
12:18PM 24 LDT. THAT WAS THE NEW STRATEGY. COLLECT SAMPLES, SHIP THEM TO
12:18PM 25 THE CENTRAL LAB, AND TEST THEM THERE USING THERANOS'S EQUIPMENT

12:18PM 1 AND USING OTHER COMPANY'S EQUIPMENT. THAT'S WHAT HAPPENED.

12:18PM 2 BUT AS I SAID BEFORE, THE CENTRAL LAB MODEL KIND OF
12:18PM 3 CHANGED THERANOS'S ABILITY TO DO THE TESTING. THERANOS'S
12:18PM 4 EQUIPMENT WAS CAPABLE OF DOING VOLUME IN A STORE, 10 SAMPLES,
12:18PM 5 20 SAMPLES, 30 A DAY. THAT'S WHAT IT WAS MADE TO DO.

12:18PM 6 WHEN THE AGREEMENT AND BUSINESS WITH WALGREENS CHANGED,
12:18PM 7 ALL OF A SUDDEN THERANOS HAD TO SHIFT. CIRCUMSTANCES HAD TO
12:18PM 8 CHANGE. THEY HAD TO CHANGE. HOW COULD THEY PROCESS THOUSANDS
12:18PM 9 OF SAMPLES A DAY IN A CENTRAL LAB UNTIL THE FDA APPROVAL WAS
12:18PM 10 OBTAINED TO PUT THE DEVICES IN STORES.

12:18PM 11 WELL, THE SOLUTION WAS MODIFIED COMMERCIAL DEVICES.

12:19PM 12 AND HOW THIS HAPPENED WAS -- REMEMBER, THIS IS THE SUMMER
12:19PM 13 OF 2012 GOING INTO 2013, THERANOS HAD BEEN DOING FINGERSTICK
12:19PM 14 TESTING BY THAT TIME PERIOD FOR YEARS. THEY HAD THE
12:19PM 15 TECHNOLOGY, THE EQUIPMENT, THE CHEMISTRY, THE METHODS.

12:19PM 16 AND WHAT THEY DID IS THAT THEY APPLIED THAT KNOWLEDGE TO
12:19PM 17 COMMERCIAL MACHINES THAT COULD DO HIGH VOLUME AND COMBINED THE
12:19PM 18 TWO TO AN INNOVATIVE SOLUTION TO NOW DO FINGERSTICK TESTING AT
12:19PM 19 A HIGH VOLUME UNTIL IT COULD GET THE FDA APPROVAL FOR THEIR OWN
12:19PM 20 TECHNOLOGY. THAT'S HOW THE MODIFIED COMMERCIAL DEVICES CAME
12:19PM 21 ABOUT.

12:19PM 22 AND THIS WAS INNOVATION. THERANOS SOUGHT TO PROTECT THE
12:19PM 23 SCIENCE, THE EQUIPMENT DEVELOPED, THE CHEMISTRY DEVELOPED, AND
12:19PM 24 THE SOFTWARE DEVELOPED BY OBTAINING PATENTS TO PROTECT IT SO
12:19PM 25 THAT COMPETITORS COULDN'T STEAL IT.

1 THEY OBTAINED PATENTS FOR SOME OF THE HARDWARE, SOME OF
2 THE METHODS, AND FOR THE SOFTWARE THAT WENT INTO MODIFYING
3 THESE COMMERCIAL DEVICES. THAT'S HOW THAT CAME ABOUT.

4 INVESTORS WERE NOT MISLED ABOUT THAT FACT, AND THIS CAME
5 ABOUT AS A RESULT OF WALGREENS'S BUSINESS RELATIONSHIP AND THE
6 CHANGE WITH THE 2012 AGREEMENT.

7 NOW, YOU HEARD THE GOVERNMENT TALK ABOUT EVIDENCE RELATING
8 TO THE WALGREENS RELATIONSHIP AND WALGREENS INTENTIONS TO PUT
9 THERANOS TESTING IN WALGREENS STORES NATIONWIDE, AND THE
10 GOVERNMENT SUGGESTED TO YOU THAT THE EVIDENCE IS GOING TO SHOW
11 THAT WALGREENS WASN'T GOING TO DO IT UNTIL THE PERCENTAGE OF
12 FINGERSTICK TESTING AT THERANOS WAS MORE THAN 90 PERCENT OR
13 MORE. THAT'S WHAT THE GOVERNMENT SUGGESTED IN THE OPENING.

14 AND WHAT I PROPOSE TO YOU THE EVIDENCE IS ACTUALLY GOING
15 TO SHOW, IS THAT SUNNY DID NOT DECEIVE INVESTORS ABOUT THE
16 WALGREENS ROLLOUT OR FINANCIAL MODELS BECAUSE, FIRST, WALGREENS
17 REPRESENTED TO SUNNY OVER AND OVER AND OVER AGAIN THE FACT THAT
18 WALGREENS INTENDED TO DO A NATIONAL ROLLOUT WITH THERANOS ALL
19 OF THE WAY INTO 2014.

20 YOU'RE ALSO GOING TO LEARN THAT WHAT SUNNY TOLD INVESTORS
21 ABOUT THE NATIONAL ROLLOUT MIRRORED WHAT WALGREENS WAS TELLING
22 HIM AND WHAT HE BELIEVED.

23 IN ADDITION, THOSE MODELS THAT INVESTORS WERE GIVEN,
24 SUNNY, WHEN HE PROVIDED THOSE MODELS TO INVENTORS, GAVE THEM
25 THE VARIABLES, INCLUDING THE NUMBER OF STORES THAT WERE

1 EXPECTED TO BE NATIONWIDE IN WALGREENS STORES. THAT'S WHAT THE
2 EVIDENCE IS GOING TO SHOW.

3 AND I'LL START WITH WALGREENS, AND WALGREENS'S DECLARATION
4 OF ITS INTENTION TO OPEN THERANOS TESTING IN WALGREENS STORES
5 NATIONWIDE.

6 AND WHAT YOU'RE GOING TO SEE IS BETWEEN DECEMBER OF 2013
7 ALL OF THE WAY INTO 2015 WALGREENS REPORTED TO THE PUBLIC AND
8 TO SUNNY AND ELIZABETH THAT WALGREENS INTENDED TO ROLL OUT
9 TESTING NATIONWIDE, AND IT STARTED IN LATE DECEMBER OF 2013.

10 ON DECEMBER 20TH, WALGREENS ISSUED A PRESS RELEASE TO ITS
11 OWN INVESTORS REPORTING WHAT WALGREENS BELIEVED WAS IMPORTANT
12 FOR ITS INVESTORS TO KNOW, AND IT TOLD ITS INVESTORS THAT WITH
13 THERANOS, THEY HAD COMPLETED THE FIRST STEP IN A, QUOTE,
14 "NATIONAL ROLLOUT PLAN," END QUOTE. THAT'S WALGREENS WORDS.
15 NOT SUNNY'S, NOT ELIZABETH'S.

16 IT'S WALGREENS REPORTING TO THEIR INVESTORS AND THE PUBLIC
17 THAT WALGREENS INTENDS TO GO NATIONAL.

18 ALMOST TWO WEEKS LATER, ON DECEMBER 31ST, 2013, THERE WAS
19 ANOTHER CHANGE TO THE WALGREENS AGREEMENT AND CONTRACT, A
20 LETTER AGREEMENT WAS ENTERED INTO AT THAT TIME.

21 AND AT THE TIME THERANOS AND WALGREENS WANTED TO SPEED UP
22 THE NATIONAL ROLLOUT, AND WALGREENS AGREED TO PAY THERANOS AT
23 THAT TIME \$75 MILLION OUT OF \$100 MILLION INNOVATION PAYMENT,
24 AGAIN, TO SPEED THE NATIONAL ROLLOUT.

25 THESE TWO EVENTS ARE WALGREENS IS TELLING THE PUBLIC AND

12:23PM 1 TELLING SUNNY THAT THEY INTEND TO GO NATIONAL WITH THERANOS
12:23PM 2 TESTING.

12:23PM 3 AND THROUGHOUT 2014 YOU'RE GOING TO SEE AND LEARN IN THESE
12:23PM 4 MEETINGS BETWEEN WALGREENS EXECUTIVES AND THERANOS, INCLUDING
12:23PM 5 SUNNY, WALGREENS CONFIRMED TO SUNNY THAT WALGREENS INTENDED TO
12:23PM 6 OPEN AND CONFIRM THEIR GOAL TO OPEN 2,000 WALGREENS STORES
12:23PM 7 NATIONWIDE IN 2015. THAT WAS MAY OF 2014 WHEN THOSE
12:23PM 8 REPRESENTATIONS HAPPENED.

12:23PM 9 A COUPLE OF MONTHS LATER, IN AUGUST OF 2014, AGAIN, IN
12:23PM 10 THESE MEETINGS, WALGREENS EXECUTIVES CONFIRM 2,000 STORES IN
12:23PM 11 2015 WAS THEIR GOAL.

12:23PM 12 AND AGAIN, JUST TWO WEEKS LATER, MID-AUGUST 2014,
12:23PM 13 WALGREENS EXECUTIVES TELLING SUNNY, WALGREENS WAS COMMITTED TO
12:24PM 14 HIT 2,000 STORES IN 2015.

12:24PM 15 AGAIN, AND AGAIN, AND AGAIN WALGREENS IS TELLING SUNNY
12:24PM 16 THAT THEY INTEND TO ROLL OUT THERANOS'S TESTING, AND THEY
12:24PM 17 CONTINUE TO HAVE THESE DISCUSSIONS WITH SUNNY INTO 2015 TALKING
12:24PM 18 ABOUT STORES IN SOUTHERN CALIFORNIA, ARIZONA, AND PENNSYLVANIA
12:24PM 19 FOR THE NATIONAL ROLLOUT.

12:24PM 20 AND WHAT YOU'RE GOING TO LEARN IS CONCURRENT WITH
12:24PM 21 WALGREENS TELLING SUNNY THAT WALGREENS INTENDED TO ROLL OUT
12:24PM 22 NATIONALLY, SUNNY IS HAVING DISCUSSIONS WITH INVESTORS, AND
12:24PM 23 SUNNY IS TELLING INVESTORS JUST WHAT WALGREENS IS TELLING SUNNY
12:24PM 24 ABOUT THE NATIONAL ROLLOUT.

12:24PM 25 AND I PUT UP ON THE SCREEN A TIMELINE. AT THE MIDPOINT --

12:24PM 1 BELOW THE MIDPOINT YOU'RE GOING TO SEE THE EVENTS THAT I JUST
12:24PM 2 TALKED ABOUT WHEN WALGREENS WAS REPORTING TO THE PUBLIC AND TO
12:24PM 3 SUNNY THAT THEY INTEND TO GO NATIONAL. FOR EXAMPLE, IN LATE
12:25PM 4 DECEMBER 2013, THE PRESS RELEASE AND THE ROLLOUT.

12:25PM 5 CONCURRENT WITH THAT, THERANOS AND SUNNY ARE HAVING
12:25PM 6 COMMUNICATIONS WITH INVESTORS, AND SOME OF THOSE INVESTORS WERE
12:25PM 7 GIVEN MATERIALS ABOUT THERANOS'S PLANS WITH WALGREENS AND THE
12:25PM 8 NATIONAL ROLLOUT, CONSISTENT WITH WHAT WALGREENS IS TELLING
12:25PM 9 SUNNY AND ELIZABETH.

12:25PM 10 AND THEN FURTHER INTO THE YEAR, AS I MENTIONED, WALGREENS
12:25PM 11 TELLING SUNNY OVER AND OVER AND OVER AGAIN THAT WALGREENS HAD
12:25PM 12 THE GOAL AND INTENDED TO HIT 2,000 STORES IN 2015.

12:25PM 13 WITHIN DAYS OF WALGREENS MAKING THOSE REPRESENTATIONS TO
12:25PM 14 SUNNY, SUNNY AND ELIZABETH ARE HAVING SOME DISCUSSIONS WITH
12:25PM 15 INVESTORS IN THE FALL OF 2014, INCLUDING THAT MS. PETERSON, WHO
12:25PM 16 YOU HEARD THE GOVERNMENT REFERENCE IN THEIR OPENING.

12:25PM 17 AT THAT TIME SUNNY SHARED WITH THEM INVESTOR MATERIALS
12:25PM 18 ABOUT THE WALGREENS RELATIONSHIP AND THE NATIONAL ROLLOUT AND
12:26PM 19 THE MODEL ABOUT THE POTENTIAL BUSINESS, ALL REFLECTING WHAT
12:26PM 20 WALGREENS WAS TELLING SUNNY, THAT WALGREENS INTENDED TO ROLL
12:26PM 21 OUT INTO 2,000 STORES NATIONWIDE. THAT'S WHAT THE EVIDENCE IS
12:26PM 22 GOING TO SHOW.

12:26PM 23 SUNNY BELIEVED WALGREENS, AND THEN HE TOLD INVESTORS WHAT
12:26PM 24 WALGREENS WAS TELLING HIM. THAT'S WHAT YOU'RE GOING TO LEARN
12:26PM 25 IN THIS TRIAL.

12:26PM 1 IN ADDITION, AS I MENTIONED, THE FINANCIAL MODEL THAT THE
12:26PM 2 GOVERNMENT REFERENCED. SUNNY GAVE INVESTORS FINANCIAL MODELS.
12:26PM 3 WHAT THOSE MODELS WERE NOT, THEY'RE NOT A FORECAST.

12:26PM 4 IT'S NOT LIKE YOU HEARD ON THE NEWS APPLE FORECASTS
12:26PM 5 2 BILLION DOLLARS NEXT QUARTER; MICROSOFT FORECASTS X BILLION
12:26PM 6 DOLLARS NEXT YEAR.

12:26PM 7 THIS IS COMING FROM A STARTUP, A SMALL COMPANY LIKE
12:26PM 8 THERANOS, IN A RELATIVELY NEW BUSINESS. THE INVESTORS WERE
12:26PM 9 TOLD ALL OF THE VARIABLES THAT WENT INTO THOSE MODELS.

12:26PM 10 WHEN SUNNY PRESENTED THOSE MODELS TO INVESTORS, SOMETIMES
12:26PM 11 HE WOULD DO IT, HE WOULD HAVE AN EXCEL SPREADSHEET, SHOOT IT UP
12:27PM 12 ON THE WALL AND SHOW THE INVESTORS THE INPUTS AND THE VARIABLES
12:27PM 13 INTO THE MODEL THAT WOULD CHANGE THE NUMBERS BECAUSE IT WASN'T
12:27PM 14 A PROJECTION, IT WAS A MODEL.

12:27PM 15 WHEN YOU CHANGE THE INPUTS, THE NUMBERS WOULD CHANGE, AND
12:27PM 16 THE INPUTS THE INVESTORS WERE TOLD WAS FIRST IN OCTOBER OF 2014
12:27PM 17 THERANOS'S TESTING WAS IN 41 STORES AT THAT POINT: 1 IN
12:27PM 18 PALO ALTO AND 40 IN ARIZONA. AND THE NUMBER OF STORES, AGAIN,
12:27PM 19 WAS PUBLISHED ON THERANOS'S WEBSITE.

12:27PM 20 NOW, THE INVESTORS WERE ALSO TOLD THAT THAT MODEL WAS
12:27PM 21 BASED ON THE NUMBER OF STORES THAT THERANOS WOULD BE OPENING IN
12:27PM 22 2015, AGAIN, WHICH WAS REFLECTED BY WHAT WALGREENS WAS TELLING
12:27PM 23 SUNNY.

12:27PM 24 IN ADDITION, THE MODEL STARTED, WITH RESPECT TO RETAIL
12:27PM 25 INCOME FROM THE WALGREENS RELATIONSHIP, AT ZERO. THE MODEL

12:27PM 1 REFLECTED NO INCOME FROM ANY WALGREENS BUSINESS UP UNTIL
12:27PM 2 OCTOBER OF 2014. THERE WAS NO MISREPRESENTATION TO INVESTORS
12:28PM 3 THAT THERANOS WAS GOING TO MAKE \$240 MILLION OR \$140 MILLION IN
12:28PM 4 2014.

12:28PM 5 THE MODEL IN OCTOBER OF 2014 STARTED AT ZERO RETAIL
12:28PM 6 INCOME. THAT'S WHAT THE EVIDENCE IS GOING TO SHOW.

12:28PM 7 AND WHAT YOU'RE ALSO GOING TO LEARN IS THAT SUNNY BELIEVED
12:28PM 8 WHAT WALGREENS WAS TELLING HIM ABOUT THE NATIONAL ROLLOUT, BUT
12:28PM 9 HE TOOK STEPS TO MAKE IT HAPPEN. THAT'S HOW YOU'RE GOING TO
12:28PM 10 KNOW WHAT WAS IN SUNNY'S MIND AT THE TIME.

12:28PM 11 IN LATE 2014 THERANOS HAD ITS LABORATORY IN NEWARK,
12:28PM 12 CALIFORNIA AND ONE STATION CENTER IN PALO ALTO.

12:28PM 13 IN THE 2014 TIME PERIOD, WHEN THESE COMMUNICATIONS AND
12:28PM 14 DISCUSSIONS ARE HAPPENING WITH WALGREENS ABOUT HITTING 2,000
12:28PM 15 STORES NATIONWIDE, IN THAT TIME PERIOD THERANOS DEVELOPED A
12:28PM 16 STRATEGY OF TARGETING 1500 PATIENT OFFICES, A WHOLE SALES TEAM
12:29PM 17 TO EXPAND THERANOS'S TESTING FOOTPRINT.

12:29PM 18 IN THIS TIME PERIOD THERANOS OPENED A SECOND LAB, A SECOND
12:29PM 19 LAB. YOU DIDN'T HEAR THE GOVERNMENT TALK ABOUT THAT.

12:29PM 20 THERE WAS THE NEWARK LAB WHERE ADAM ROSENDORFF WAS THE
12:29PM 21 LABORATORY DIRECTOR.

12:29PM 22 THERE WAS A SECOND LAB OPENED IN LATE 2014 BY THERANOS IN
12:29PM 23 ANTICIPATION, AGAIN, OF THE NATIONAL ROLLOUT.

12:29PM 24 IN ADDITION, IN JANUARY OF 2015 THERANOS SIGNED A LEASE, A
12:29PM 25 CONTRACT, AND STARTED BUILDING A THIRD LAB IN PENNSYLVANIA,

12:29PM 1 AGAIN, IN ANTICIPATION OF THE NATIONAL ROLLOUT AS WALGREENS WAS
12:29PM 2 TELLING SUNNY.

12:29PM 3 SO YOU'LL SEE AND LEARN IN THIS TRIAL SUNNY'S ACTIONS SHOW
12:29PM 4 YOU WHAT HE BELIEVED, AND HE BELIEVED WHAT WALGREENS WAS
12:29PM 5 TELLING HIM.

12:29PM 6 I'M GOING TO SHIFT A LITTLE BIT AND SAY A FEW WORDS ABOUT
12:29PM 7 THE DEPARTMENT OF DEFENSE. THE GOVERNMENT REFERENCED POTENTIAL
12:29PM 8 OR ALLEGED MISREPRESENTATIONS TO INVESTORS ABOUT THERANOS'S
12:30PM 9 BUSINESS WITH THE DEPARTMENT OF DEFENSE. THEY TALKED ABOUT
12:30PM 10 HELICOPTERS AND OTHER THINGS.

12:30PM 11 FIRST, YOU'LL LEARN IN THIS TRIAL THAT THERANOS HAD
12:30PM 12 RELATIONSHIPS WITH THE DEPARTMENT OF DEFENSE, WITH MULTIPLE
12:30PM 13 ELEMENTS OF THE DEPARTMENT OF DEFENSE: THE U.S. ARMY BURN
12:30PM 14 CENTER; THEY HAD A RELATIONSHIP WITH THE SPECIAL OPERATIONS
12:30PM 15 COMMAND; THEY HAD A RELATIONSHIP WITH THE U.S. AFRICA COMMAND;
12:30PM 16 AND A RELATIONSHIP WITH THE U.S. CENTRAL COMMAND. THAT WAS
12:30PM 17 REAL. SOME OF THAT PREEXISTED SUNNY'S JOINING THERANOS.

12:30PM 18 BUT WHAT IS IMPORTANT FOR YOU TO KNOW IS THAT INVESTORS
12:30PM 19 WERE TOLD ABOUT THOSE RELATIONSHIPS, THEY WERE TOLD THOSE
12:30PM 20 RELATIONSHIPS WERE ON PAUSE. THERANOS WAS NOT INTENDING TO
12:30PM 21 MAKE ANY MONEY FROM THOSE RELATIONSHIPS BECAUSE THE FOCUS WAS
12:30PM 22 ON RETAIL. THE FOCUS WAS ON WALGREENS AND THE NATIONAL
12:30PM 23 ROLLOUT.

12:30PM 24 AND THE WAY YOU KNOW THAT THERANOS TOLD AND SUNNY TOLD
12:30PM 25 INVESTORS THAT THEY DIDN'T INTEND TO MAKE ANY MONEY FROM THE

12:30PM 1 DEPARTMENT OF DEFENSE RELATIONSHIPS IS THAT IN THOSE MODELS
12:31PM 2 THAT THE GOVERNMENT POINTED TO IN THEIR OPENING, THERE WAS A
12:31PM 3 LINE ITEM, THERE IS AN ENTRY FOR DEPARTMENT OF DEFENSE.

12:31PM 4 AND FOR 2014 AND 2015, THE MODEL GIVEN TO INVESTORS SHOWED
12:31PM 5 ZERO. ZERO. IT WASN'T PROJECTING ANYTHING OR MODELING
12:31PM 6 ANYTHING BECAUSE SUNNY TOLD THE INVESTORS THAT THEY HAD
12:31PM 7 RELATIONSHIPS WITH THE DOD. THEY WERE INTERESTING
12:31PM 8 RELATIONSHIPS THAT DEMONSTRATE HOW THERANOS'S TECHNOLOGY COULD
12:31PM 9 BE USED, BUT THEY WEREN'T PLANNING TO MAKE MONEY FROM IT. IT
12:31PM 10 WASN'T A FOCUS.

12:31PM 11 SO INVESTORS WERE TOLD "TO BE DECIDED" REGARDING THE
12:31PM 12 DEPARTMENT OF DEFENSE.

12:31PM 13 NOW, ANOTHER ELEMENT IN THE CASE HERE, AND THE GOVERNMENT
12:31PM 14 REFERENCED IT IN ITS OPENING, THE SUGGESTION THAT INVESTORS,
12:31PM 15 BUT MOSTLY PATIENTS ON THIS FRONT, WERE DECEIVED ABOUT THE
12:31PM 16 CAPABILITIES AND ACCURACY AND RELIABILITY OF THERANOS'S TESTS.

12:31PM 17 AND WHAT THE EVIDENCE IS GOING TO SHOW IS THAT SUNNY DID
12:32PM 18 NOT DECEIVE PATIENTS ABOUT THE ACCURACY AND RELIABILITY OF
12:32PM 19 TESTS. AND SO THE EVIDENCE THAT IS GOING TO SHOW THAT IS FIRST
12:32PM 20 DR. ROSENDORFF, THAT YOU HEARD THE GOVERNMENT REFERENCE IN
12:32PM 21 OPENING STATEMENT, WAS THE LAB DIRECTOR IN THE NEWARK LAB IN
12:32PM 22 2013 AND 2014.

12:32PM 23 DR. ROSENDORFF VALIDATED AND APPROVED THE USE OF ALL
12:32PM 24 FINGERSTICK TESTS IN THERANOS'S LAB BECAUSE THAT WAS HIS JOB AS
12:32PM 25 LAB DIRECTOR. HE WAS TRAINED. HE WAS A MEDICAL DOCTOR.

12:32PM 1 SUNNY DID NOT APPROVE THE USE OF THOSE TESTS ON PATIENTS,
12:32PM 2 AND ELIZABETH DIDN'T APPROVE THE USE OF THOSE TESTS ON
12:32PM 3 PATIENTS. DR. ROSENDORFF DID. THAT'S WHAT YOU'LL LEARN IN
12:32PM 4 THIS TRIAL.

12:32PM 5 IN ADDITION, AFTER ROSENDORFF QUIT, AND THAT'S WHAT HE DID
12:32PM 6 IS QUIT IN NOVEMBER OF 2014, SUNNY IDENTIFIED A REPLACEMENT
12:32PM 7 ONSITE LAB DIRECTOR FOR ROSENDORFF.

12:32PM 8 HE DIDN'T HIRE AN ABSENTEE LAB DIRECTOR WHO HE WANTED TO
12:33PM 9 OVERSEE THE LAB. IT WAS IMPORTANT FOR SUNNY TO HAVE A
12:33PM 10 PERMANENT ONSITE LAB DIRECTOR.

12:33PM 11 AND DURING THAT TIME PERIOD WHILE HE WAS WAITING FOR THE
12:33PM 12 NEW LAB DIRECTOR TO BE ABLE TO TAKE OVER, HE HIRED DR. DHAWAN,
12:33PM 13 WHO YOU HEARD THE GOVERNMENT REFERENCE.

12:33PM 14 HE ALSO HIRED ANOTHER LAB DIRECTOR, LYNETTE SAWYER.

12:33PM 15 NOW, DR. DHAWAN WAS QUALIFIED. HE WAS A MEDICAL DOCTOR.
12:33PM 16 HE WENT TO MEDICAL SCHOOL. BUT HE WAS TEMPORARY, A TEMPORARY
12:33PM 17 REPLACEMENT FOR ROSENDORFF IN THE NEWARK LAB WHILE SUNNY WAITED
12:33PM 18 FOR THE PERMANENT LAB DIRECTOR TO BE READY TO TAKE OVER.
12:33PM 19 THAT'S WHAT THE EVIDENCE IS GOING TO SHOW.

12:33PM 20 NOW, A LITTLE BIT ABOUT DR. ROSENDORFF, WHO SUNNY AND
12:33PM 21 ELIZABETH RELIED UPON TO RUN THE LABORATORY.

12:33PM 22 ROSENDORFF WAS A WELL-QUALIFIED LAB DIRECTOR. HE WENT TO
12:33PM 23 MEDICAL SCHOOL AT MOUNT SINAI SCHOOL OF MEDICINE IN NEW YORK;
12:33PM 24 HE DID FIVE YEARS OF POST-DOCTORAL RESEARCH AT HARVARD; FORMER
12:34PM 25 PROFESSOR OF PATHOLOGY AT UNIVERSITY OF PITTSBURGH; HE HAD FOUR

12:34PM 1 AND A HALF YEARS OF EXPERIENCE AS A MEDICAL DIRECTOR AT
12:34PM 2 CHILDREN'S HOSPITAL AT PITTSBURGH. WELL-QUALIFIED ACCORDING TO
12:34PM 3 WHAT SUNNY SAW, AND THAT'S WHY DR. ROSENDORFF WAS HIRED.

12:34PM 4 AND DR. ROSENDORFF, AS I MENTIONED, REVIEWED AND APPROVED
12:34PM 5 ALL FINGERSTICK TESTS USED ON PATIENTS. I PUT UP ON THE
12:34PM 6 SCREEN, THIS IS AN EXAMPLE, THIS IS THE FIRST PAGE OF ONE OF
12:34PM 7 THOSE VALIDATION REPORTS.

12:34PM 8 AND WHAT A VALIDATION REPORT IS A STUDY DONE BY SCIENTISTS
12:34PM 9 IN THE LAB THROUGH PATIENT SAMPLES TO VERIFY THE ACCURACY AND
12:34PM 10 RELIABILITY OF THE TESTS BEFORE THE TEST WAS USED ON PATIENTS.
12:34PM 11 AND THIS IS PREPARED BY TWO SCIENTISTS WHO SIGNED OFF, REVIEWED
12:34PM 12 BY THREE PH.D.'S IN THE MIDDLE THAT YOU SEE THERE WHO REVIEWED
12:34PM 13 THE TECHNOLOGY, REVIEWED THE DATA, AND THEN REVIEWED AND
12:34PM 14 APPROVED BY ADAM ROSENDORFF BEFORE THE TESTS WERE EVER USED ON
12:34PM 15 PATIENTS. THAT'S WHAT THE EVIDENCE IS GOING TO SHOW.

12:35PM 16 SUNNY DID NOT VALIDATE AND APPROVE THOSE TESTS. HE'S NOT
12:35PM 17 QUALIFIED. SUNNY IS A SOFTWARE COMPUTER GUY. HE RELIED ON
12:35PM 18 ROSENDORFF TO VALIDATE THOSE TESTS AND APPROVE THOSE TESTS AND
12:35PM 19 MONITOR THE ACCURACY AND RELIABILITY OF THE TESTING FOR
12:35PM 20 PATIENTS.

12:35PM 21 AND WE EXPECT ROSENDORFF WILL TESTIFY IN THIS TRIAL, AND
12:35PM 22 HE'LL TELL YOU THAT THE VALIDATION STUDIES FOR THE FINGERSTICK
12:35PM 23 TESTS MET HIS, ROSENDORFF'S, STANDARDS. NOT SUNNY'S OR
12:35PM 24 ELIZABETH'S, THEY'RE NOT REQUIRED TO DO THAT.

12:35PM 25 ROSENDORFF WILL TELL YOU THAT THE TESTS AND VALIDATION

12:35PM 1 REPORTS MET HIS STANDARDS.

12:35PM 2 WE ALSO BELIEVE THAT ROSENDORFF WILL ALSO TELL YOU THAT
12:35PM 3 WHEN HE WAS RUNNING THE LAB, HE NEVER OFFERED A TEST THAT HE
12:35PM 4 BELIEVED WAS UNRELIABLE. AGAIN, HE WAS THE LAB DIRECTOR, NOT
12:35PM 5 SUNNY, NOT ELIZABETH. NEITHER OF THEM ARE QUALIFIED TO MAKE
12:35PM 6 THOSE DETERMINATIONS.

12:35PM 7 ROSENDORFF WAS, AND HE WILL TELL YOU HE BELIEVED HE NEVER
12:35PM 8 OFFERED A TEST THAT HE THOUGHT WAS UNRELIABLE AT THE TIME.

12:36PM 9 DURING THIS TIME PERIOD SUNNY HIRED HELP FOR ROSENDORFF.
12:36PM 10 HE WASN'T LEFT ALONE IN THE LAB TO RUN THE LAB.

12:36PM 11 DR. PANDORI YOU HEARD THE GOVERNMENT REFERENCE.
12:36PM 12 DR. PANDORI WILL TESTIFY HE WAS A CO-LAB DIRECTOR HIRED BY
12:36PM 13 SUNNY AND ELIZABETH AT DR. ROSENDORFF'S AGREEMENT TO HELP HIM
12:36PM 14 RUN THE LAB.

12:36PM 15 ANOTHER INDIVIDUAL HIRED BY SUNNY AND ELIZABETH AND AGREED
12:36PM 16 UPON BY DR. ROSENDORFF, WAS A GUY NAMED LAGLEY GEE WHO WAS IN
12:36PM 17 CHARGE OF QUALITY CONTROL AT THERANOS. SUNNY WASN'T INVOLVED
12:36PM 18 OF QUALITY CONTROL, AND ELIZABETH WASN'T INVOLVED OF QUALITY
12:36PM 19 CONTROL. ROSENDORFF AND LAGLEY GEE WERE IN CHARGE OF QUALITY
12:36PM 20 CONTROL BECAUSE THEY KNEW HOW TO RUN A LAB. NOT SUNNY.

12:36PM 21 IN ADDITION, DR. ROSENDORFF QUIT IN NOVEMBER OF 2014 AFTER
12:36PM 22 HE GOT ANOTHER JOB. AND WHEN HE QUIT, HE DIDN'T GO TO
12:36PM 23 AUTHORITIES. HE DIDN'T GO TO THE FBI. HE DIDN'T GO TO CMS OR
12:37PM 24 CALIFORNIA REGULATORS. HE TALKED TO A REPORTER ONCE LATER,
12:37PM 25 THAT'S WHAT HE DID. THAT'S WHAT YOU'LL LEARN IN THIS TRIAL.

12:37PM 1 AND AS I MENTIONED, AFTER ROSENDORFF QUIT. SUNNY

12:37PM 2 IDENTIFIED A PERMANENT ONSITE LAB DIRECTOR TO TAKE OVER BECAUSE
12:37PM 3 HE BELIEVED IT WAS IMPORTANT TO HAVE A PERMANENT ONSITE LAB
12:37PM 4 DIRECTOR. HE DIDN'T WANT AN ABSENTEE LAB DIRECTOR. AND THE
12:37PM 5 PERSON HE IDENTIFIED WAS DR. SURAJ SAKSENA.

12:37PM 6 DR. SAKSENA WAS A PH.D. IN BIOCHEMISTRY. HE WORKED AT
12:37PM 7 THERANOS SINCE 2011 IN THE LAB. SUNNY ASKED SAKSENA TO BECOME
12:37PM 8 LAB DIRECTOR AS SOON AFTER ROSENDORFF QUIT.

12:37PM 9 AND BECAUSE IT WAS SO IMPORTANT TO SUNNY TO HAVE A
12:37PM 10 PERMANENT ONSITE FULL-TIME LAB DIRECTOR, SUNNY PAID DR. SAKSENA
12:37PM 11 TIME OFF. HE GAVE HIM PAID LEAVE TO STUDY FOR AN EXAM THAT
12:37PM 12 SAKSENA NEEDED TO BECOME LAB DIRECTOR, AND SAKSENA DID JUST
12:38PM 13 THAT. HE STUDIED FOR MONTHS AND TOOK THE EXAM IN MAY OF 2015
12:38PM 14 AND PASSED THE EXAM WITH HIGH SCORES.

12:38PM 15 AND ON MAY 21ST, DR. SAKSENA SUBMITTED HIS APPLICATION TO
12:38PM 16 BECOME THE NEW LAB DIRECTOR OF THE NEWARK LAB, JUST AS SUNNY
12:38PM 17 PLANNED.

12:38PM 18 AND THEN DR. SAKSENA AND SUNNY WAITED FOR CALIFORNIA
12:38PM 19 AUTHORITIES TO RESPOND TO THE APPLICATION, AND THEY WAITED, AND
12:38PM 20 THEY WAITED, AND THEY WAITED A LITTLE MORE UNTIL MARCH OF 2016.
12:38PM 21 TEN MONTHS LATER CALIFORNIA AUTHORITIES RESPONDED TO THAT
12:38PM 22 APPLICATION, BUT BY THEN IT WAS TOO LATE. IT DIDN'T MATTER.
12:38PM 23 BY THAT TIME THERE WERE NEW CONSULTANTS RUNNING THE LAB, A NEW
12:38PM 24 LAB DIRECTOR.

12:38PM 25 BUT THAT WASN'T SUNNY'S INTENT IN 2015 AFTER ROSENDORFF

12:38PM 1 QUIT. SAKSENA WAS GOING TO BE THE NEXT PERMANENT ONSITE LAB
12:39PM 2 DIRECTOR.

12:39PM 3 IN ADDITION, WHEN ROSENDORFF LEFT THERANOS, THINGS WERE
12:39PM 4 CHANGING AT THE TIME.

12:39PM 5 AS I MENTIONED, A NEW LAB OPENED IN ARIZONA. THAT LAB HAD
12:39PM 6 ITS OWN LAB DIRECTOR, DR. DANIEL YOUNG. AND SO THINGS WERE
12:39PM 7 GOING TO BE CHANGING AT THERANOS DURING THAT TIME PERIOD.

12:39PM 8 SO ROSENDORFF QUIT IN NOVEMBER.

12:39PM 9 AT THE SAME TIME THE NEW LAB WAS OPENING.

12:39PM 10 SAKSENA WAS TOUTED TO BECOME THE NEW LAB DIRECTOR IN
12:39PM 11 NEWARK.

12:39PM 12 DR. YOUNG WAS THE NEW LAB DIRECTOR IN ARIZONA AND WAS
12:39PM 13 EXPECTING GOING FORWARD PATIENT VOLUME SAMPLES WERE GOING TO BE
12:39PM 14 SPLIT BETWEEN THE TWO LABS, AND THAT'S WHEN SUNNY HIRED DHAWAN
12:39PM 15 AND SAWYER TO BECOME THE TEMPORARY LAB DIRECTORS IN NEWARK.

12:39PM 16 NOW, AS I MENTIONED, YOU KNOW, ROSENDORFF QUIT IN NOVEMBER
12:39PM 17 OF 2014.

12:40PM 18 DHAWAN AND SAWYER -- DR. DHAWAN -- WERE HIRED SOON AFTER
12:40PM 19 TO BE TEMPORARY LAB DIRECTORS IN NEWARK. THEY WERE BOTH
12:40PM 20 QUALIFIED.

12:40PM 21 DR. DHAWAN WENT TO MEDICAL SCHOOL JUST LIKE
12:40PM 22 DR. ROSENDORFF. HE ACTUALLY WENT TO U.S.C. HE TAUGHT AT
12:40PM 23 MEDICAL SCHOOLS. HE HAD HIS OWN LAB, SUPPORTING HIS OWN
12:40PM 24 PRACTICE. AND DERMATOLOGISTS ARE REAL DOCTORS. THEY HANDLE
12:40PM 25 REAL MEDICAL ISSUES LIKE SKIN CANCER. THEY'RE NOT PRETEND.

12:40PM 1 AND THAT'S WHO SUNNY TAPPED TO BE A TEMPORARY LAB
12:40PM 2 DIRECTOR, AS WELL AS DR. SAWYER WHO IS EXPERIENCED.
12:40PM 3 BUT YOU'RE GOING TO LEARN MORE ABOUT HOW LABS OPERATE IN
12:40PM 4 THIS TRIAL THAN YOU EVER WANTED TO KNOW.
12:40PM 5 AND THE LAB DIRECTOR IS NOT THERE RUNNING THE TESTS. HE'S
12:40PM 6 NOT EVEN OVERSEEING OR HE'S NOT EVEN PERSONALLY EVER MANAGED OR
12:40PM 7 MANAGING THE TESTING.
12:40PM 8 THE LAB DIRECTOR IS LIKE A CEO. HE'S WAY UP HERE MAKING
12:40PM 9 POLICY DECISIONS, GETTING QUESTIONS AND ISSUES, AND POLICY
12:40PM 10 ISSUES FROM THE STAFF. HE'S NOT THERE RUNNING THE LAB
12:41PM 11 DAY-TO-DAY DOING THE ACTUAL TESTING.
12:41PM 12 IN FACT, CALIFORNIA REGULATIONS AT THAT TIME PERMITTED ONE
12:41PM 13 LAB DIRECTOR TO RUN UP TO FIVE LABS.
12:41PM 14 SO THE RULES AND REGULATIONS AT THE TIME PERMITTED
12:41PM 15 PART-TIME LAB DIRECTORS.
12:41PM 16 SUNNY DIDN'T WANT A PART-TIME LAB DIRECTOR, BUT HE HIRED
12:41PM 17 TWO OF THEM TEMPORARILY UNTIL DR. SAKSENA COULD GET APPROVED TO
12:41PM 18 BE THE LAB DIRECTOR. THAT'S WHAT THE EVIDENCE WILL SHOW.
12:41PM 19 AND AGAIN, THEY'RE BOTH TEMPORARY. AND YOU KNOW THEY WERE
12:41PM 20 TEMPORARY NOT BECAUSE YOU'RE GOING TO HEAR THAT. MAYBE THEY'LL
12:41PM 21 SAY IT, MAYBE NOT. THE CONTRACTS THAT THEY SIGNED, SIX MONTH
12:41PM 22 CONTRACTS, CONSULTING AGREEMENT. THEY WERE NEVER GOING TO BE
12:41PM 23 THE PERMANENT ONSITE LAB DIRECTORS. THAT WASN'T THE INTENT.
12:41PM 24 NOW, LET ME SAY A FEW WORDS ABOUT THIS. THE GOVERNMENT
12:41PM 25 REFERENCED CMS, CENTERS FOR MEDICARE AND MEDICAID SERVICES.

12:41PM 1 THEY'RE THE REGULATORS THAT OVERSEE LAB TESTING IN THE
12:41PM 2 UNITED STATES.

12:41PM 3 IN SEPTEMBER OF 2015 CMS DID AN INSPECTION, AN AUDIT OF
12:42PM 4 THERANOS'S LAB. BUT THAT INSPECTION, THAT AUDIT, IT WASN'T A
12:42PM 5 SURPRISE. IT WASN'T LIKE A GOTCHA MOMENT. IT WAS AN
12:42PM 6 EVERY-TWO-YEAR-SCHEDULED RECERTIFICATION OF THE LAB.

12:42PM 7 SUNNY KNEW THEY WERE COMING. HE SPOKE TO THE INSPECTORS
12:42PM 8 BEFORE THEY CAME AND PROVIDED THEM DOCUMENTATION, DID SOME
12:42PM 9 THINGS TO TRY TO PREPARE FOR THE INSPECTION, SO MOCK AUDITS AND
12:42PM 10 INSPECTIONS TO GET READY.

12:42PM 11 THE INSPECTION HAPPENED BUT THE MOST IMPORTANT THING AND
12:42PM 12 THE TAKEAWAY HERE THAT YOU'RE GOING TO LEARN IN THE TRIAL IS
12:42PM 13 THAT CMS DID NOT EVALUATE THE ACCURACY AND RELIABILITY OF
12:42PM 14 THERANOS'S TESTING TECHNOLOGY. THAT'S NOT WHAT CMS DOES.

12:42PM 15 IF THE GOVERNMENT CALLS A CMS WITNESS TO TESTIFY BEFORE
12:42PM 16 YOU, THAT PERSON WILL TELL YOU CMS DOES NOT EVALUATE THE
12:42PM 17 ACCURACY AND RELIABILITY OF THERANOS'S TECHNOLOGY OR ANY OTHER
12:42PM 18 LAB'S TECHNOLOGY. THAT'S NOT WHAT CMS DOES.

12:42PM 19 AND THAT'S WHAT YOU'LL LEARN IN THIS TRIAL.

12:43PM 20 NOW, WE SPOKE A LOT ABOUT EVIDENCE THAT IS GOING TO SHOW
12:43PM 21 THAT SUNNY HAD NO INTENT TO CHEAT INVESTORS OUT OF THEIR MONEY.
12:43PM 22 AGAIN, THIS CASE IS ABOUT WIRE FRAUD. HE NEVER TOOK ANY MONEY
12:43PM 23 INAPPROPRIATELY, NEVER MISDIRECTED THE USE OF INVESTOR MONEY.

12:43PM 24 AND YOU'RE GOING TO LEARN THAT THE INVESTOR MONEY WENT FOR
12:43PM 25 ITS INTENDED PURPOSES, TO DO EXACTLY WHAT INVESTORS WANTED,

12:43PM 1 BUILD THE BUSINESS OF THERANOS.

12:43PM 2 YOU'RE GOING TO SEE UP ON THE SCREEN THERANOS'S
12:43PM 3 MANUFACTURING FACILITIES WHERE THEY MADE THE ANALYZERS AND
12:43PM 4 EQUIPMENT, THEIR RESEARCH AND DEVELOPMENT FACILITY, INVESTORS
12:43PM 5 WANTING TO BUILD THE TWO LABS AND THE THIRD LAB. PAID THE
12:43PM 6 HUNDREDS OF LABORATORY SCIENTISTS, THE RESEARCH AND DEVELOPMENT
12:43PM 7 SCIENTISTS, AND THAT'S WHERE THE INVESTOR MONEY WENT. IT DID
12:43PM 8 NOT GO INTO SUNNY'S POCKET.

12:43PM 9 THE GOVERNMENT SUGGESTED THAT SUNNY'S STOCK WAS WORTH HALF
12:43PM 10 A BILLION DOLLARS. YEAH. AND HE COULD HAVE SOLD SOME, BUT HE
12:43PM 11 DIDN'T. HE NEVER DID.

12:44PM 12 AGAIN, SUNNY LEFT THERANOS IN MAY OF 2016. AND WHEN SUNNY
12:44PM 13 LEFT THERANOS, HE HAD HUNDREDS OF MILLIONS OF DOLLARS, INVESTOR
12:44PM 14 MONEY, SITTING IN THE BANK. THAT'S WHEN HE LEFT.

12:44PM 15 WHEN SUNNY LEFT THERANOS, THERANOS HAD VALUABLE
12:44PM 16 INTELLECTUAL PROPERTY, PATENTS, ITS FINGERSTICK TECHNOLOGY, IT
12:44PM 17 HAD TWO OPERATING CLINICAL LABS AND ANOTHER LAB BUILT IN
12:44PM 18 HARRISBURG, PENNSYLVANIA, ALL THERE IN MAY OF 2016 WHEN SUNNY
12:44PM 19 LEFT. THE MONEY WAS THERE, THE BUSINESS WAS THERE THAT WAS
12:44PM 20 BUILT WITH INVESTOR MONEY, AND SUNNY WALKED AWAY WITH NOT A
12:44PM 21 DOLLAR IN HIS POCKET FROM THERANOS.

12:44PM 22 HE NEVER SOLD THE STOCK. HE NEVER TOOK ANY MONEY.

12:44PM 23 NOW, I'M GOING TO SHIFT AGAIN TO MY LAST SUBJECT. AND
12:44PM 24 WHAT YOU'RE GOING TO LEARN IN THIS CASE IS, AS I MENTIONED, THE
12:44PM 25 CORE ALLEGATIONS IN THE GOVERNMENT'S CHARGES IS THAT THERANOS'S

1 TECHNOLOGY WAS NOT CAPABLE OF CONSISTENTLY PRODUCING ACCURATE
2 AND RELIABLE RESULTS. THAT IS THE CORE ALLEGATION.

3 AND THE EVIDENCE IS GOING TO SHOW THAT THE GOVERNMENT, IN
4 TRYING TO PROVE THAT, NEVER OBTAINED OVER THREE YEARS OF
5 PATIENT TESTING DATA AND EVIDENCE, ESSENTIALLY PATIENT RECORDS,
6 AND ANALYZED THAT TO PROVE THE GOVERNMENT'S CASE.

7 NOW, ONE THING YOU'RE GOING TO LEARN, BEFORE I TALK ABOUT
8 THE DETAILS OF THAT, IS ALL CLINICAL LABORATORIES EXPERIENCE
9 VARIABILITY AND ERROR RATES.

10 SOME OF THE GOVERNMENT'S WITNESSES WHO ARE GOING TO
11 TESTIFY, THEY'RE GOING TO TELL YOU, ALL LABORATORIES EXPERIENCE
12 VARIABILITY AND ERROR RATES. IT'S EVEN BUILT INTO THE SYSTEM.

13 AND IF THAT IS THE CASE, WHAT DOES ONE POTENTIAL ERROR OR
14 QUESTION ABOUT A TEST OR AN EMAIL ABOUT QUALITY CONTROL THAT
15 FAILED MEAN ABOUT THE ACCURACY AND RELIABILITY OF THE
16 TECHNOLOGY AND EVERYTHING IT DOES?

17 BECAUSE YOU'LL ALSO LEARN THAT CLIA, THE CLINICAL
18 LABORATORY IMPROVEMENT AMENDMENTS -- I KNOW THAT'S A MOUTHFUL.
19 THE GOVERNMENT REFERENCED IT. YOU JUST NEED TO KNOW THAT THESE
20 ARE THE REGULATIONS THAT GOVERN, OVERSEE CLINICAL LABS. THE
21 REGULATIONS PERMIT VARIABILITY AND ERROR SOMETIMES 5 PERCENT,
22 SOMETIMES 10, 15, 20 PERCENT, ALL UP TO 30 PERCENT FOR SOME
23 TESTS.

24 AND AGAIN, IF THAT'S WHAT IS EXPECTED OR EVEN PERMITTED
25 FOR SOME TESTS, NOT ALL, BUT SOME, WHAT DOES ANY ONE ERROR

12:46PM 1 MEAN, TWO, THREE, FOUR, FIVE AMONGST TENS OF THOUSANDS,
12:46PM 2 HUNDREDS OF THOUSANDS MAYBE BILLIONS OF PATIENT RESULTS?

12:46PM 3 AND I RAISE THAT BECAUSE, AS I MENTIONED BEFORE, WHEN
12:46PM 4 THERANOS OBTAINED IT'S FDA APPROVAL AND CLEARANCE IN JULY OF
12:46PM 5 2015, THERANOS SUBMITTED TO FDA 13,754 PATIENT SAMPLES AND
12:47PM 6 CARTRIDGES AND ANALYSIS AND DATA TO PROVE TO FDA SATISFACTION
12:47PM 7 THAT THERANOS'S TECHNOLOGY MET FDA'S STANDARDS FOR SAFETY AND
12:47PM 8 ACCURACY.

12:47PM 9 BUT WHAT YOU'RE GOING TO LEARN IS THAT IN TRYING TO PROVE
12:47PM 10 THEIR CASE HERE, THE GOVERNMENT DIDN'T DO ANY OF THAT KIND OF
12:47PM 11 ANALYSIS TO PROVE THERANOS'S TECHNOLOGY DOES NOT WORK, THAT
12:47PM 12 MAYBE THE FDA GOT IT PRONG. THEY DIDN'T DO THAT.

12:47PM 13 AND YOU'RE GOING TO LEARN ABOUT SOMETHING IN THIS CASE
12:47PM 14 CALLED THE LABORATORY INFORMATION SYSTEM, THE LIS.

12:47PM 15 AND WHAT THE LIS WAS, IT WAS A DATABASE AT THERANOS,
12:47PM 16 WHAT'S CALLED A MICROSOFT SQL SERVER DATA THAT WAS CREATED BY
12:47PM 17 THERANOS. AND THIS IS WHERE THERANOS ELECTRONICALLY STORED ALL
12:47PM 18 OF THEIR PATIENT TESTING RESULTS, DATA AND RELATED RECORDS FOR
12:47PM 19 THERANOS'S CLINICAL LABORATORY FOR OVER THREE YEARS.

12:48PM 20 AND WHEN I SAY THE LIS CONTAINED ALL OF THERANOS'S LAB
12:48PM 21 TESTING DATA, I MEAN ALL, EVERY SHRED OF FACTS AND DETAILS
12:48PM 22 ANYONE WOULD EVER WANT TO KNOW;

12:48PM 23 EVERYTHING ABOUT THE PATIENT, THEIR NAME, WHAT THEIR
12:48PM 24 DOCTOR ORDERED, THEIR VISIT HISTORY, WHAT THEIR TESTS LOOK LIKE
12:48PM 25 FOR AS LONG AS THEY TESTED AT THERANOS AND OTHER DETAILS;

12:48PM 1 WHERE THE BLOOD COLLECTION WAS TAKEN, WHICH SITE, WHAT
12:48PM 2 DATE AND TIME;

12:48PM 3 WHO WAS THE PERSON WHO DREW THE BLOOD OR TOOK THE
12:48PM 4 FINGERSTICK SAMPLE. DID THAT PERSON HAVE PROBLEMS IN THEIR
12:48PM 5 HISTORY? THE CONTAINER WAS MARKED WITH A SERIAL NUMBER, AND
12:48PM 6 YOU COULD TRACK IT THROUGH THE SYSTEM;

12:48PM 7 IT INCLUDED THE TIME THE BLOOD WAS COLLECTED AND WHEN IT
12:48PM 8 WAS RECEIVED AT THE LAB;

12:48PM 9 THE LIS CONTAINED INFORMATION ABOUT WHICH LAB RAN THE
12:48PM 10 TEST. WAS IT IN NEWARK OR WAS IT IN ARIZONA?

12:49PM 11 WHO WAS THE TECHNICIAN THAT RAN THE TEST? THAT WAS IN THE
12:49PM 12 LIS.

12:49PM 13 IF YOU WANTED TO SEE IF THERE WAS A SAMPLE OR WHETHER IT
12:49PM 14 WAS CLOTTING OR SOMETHING WRONG WITH IT, THAT WAS IN LIS.

12:49PM 15 WHEN THE TEST WAS RUN, IF THERE WAS A REQUEST THAT THERE
12:49PM 16 MIGHT HAVE BEEN A PROBLEM, MAYBE THEY WOULD RERUN THE TEST OR
12:49PM 17 ASK THE PATIENT FOR A NEW SAMPLE, THAT WAS IN LIS.

12:49PM 18 WHICH DEVICE WAS USED TO RUN THE TEST? AND I DON'T MEAN
12:49PM 19 THERANOS DEVICE OR COMMERCIAL DEVICE. I MEAN EXACTLY WHICH
12:49PM 20 DEVICE BY SERIAL NUMBER WAS USED TO RUN THAT PATIENT TEST?
12:49PM 21 THAT WAS IN LIS.

12:49PM 22 IF YOU WANTED TO CHECK WHAT QUALITY CONTROL LOOKED LIKE
12:49PM 23 THAT DAY WHEN A PATIENT SAMPLE WAS RUN, THAT WEEK, THAT MONTH,
12:49PM 24 THAT YEAR, THAT WAS IN LIS.

12:49PM 25 PROFICIENCY TESTING DATA, ALL IN LIS.

12:49PM 1 THE ULTIMATE RESULTS, WHETHER THERE WERE ANY RED FLAGS,
12:49PM 2 ALL OF THAT INFORMATION WAS IN THE LIS.

12:49PM 3 AND YOU'RE ALSO GOING TO LEARN IN THE COURSE OF THIS TRIAL
12:50PM 4 HOW THE LIS WAS USED TO FOLLOW UP ON PATIENT QUESTIONS OR
12:50PM 5 DOCTOR QUESTIONS.

12:50PM 6 IF A PATIENT CALLED UP AND HAD A QUESTION ABOUT A
12:50PM 7 PREGNANCY TEST OR ANOTHER TEST THAT DIDN'T SEEM RIGHT, AND THE
12:50PM 8 RESULT DOESN'T SEEM RIGHT, CAN YOU LOOK INTO IT?

12:50PM 9 SOMEONE IN THE LAB QUESTIONS A RESULT OR QUALITY CONTROL,
12:50PM 10 HOW CAN WE FIGURE OUT WHAT WENT WRONG?

12:50PM 11 LIS IS WHERE THEY WENT. THEY WOULD PULL UP THE NAME OF
12:50PM 12 THE CUSTOMER OR PATIENT; WHO THE DOCTOR WAS; YOU COULD LOOK AT
12:50PM 13 THE PATIENT'S HISTORY AND COMPARE THE RESULTS; YOU COULD FIGURE
12:50PM 14 OUT WHERE THE COLLECTION WAS TAKEN; WHO RAN THE TEST; WAS THAT
12:50PM 15 PERSON GOOD AT THEIR JOB, MAYBE THEY MADE A MISTAKE IN DRAWING
12:50PM 16 THE BLOOD; WHICH CONTAINER WAS USED, AGAIN, WHICH DEVICE; WHICH
12:50PM 17 LAB RAN THAT TEST; WHAT QUALITY CONTROL THAT DAY, MONTH OR
12:50PM 18 YEAR.

12:50PM 19 HOW ABOUT COMPARING THAT PREGNANCY TEST WITH EVERY OTHER
12:50PM 20 ONE RAN THAT DAY, THAT MONTH OR YEAR TO SEE IF THERE WERE
12:51PM 21 ISSUES WITH THAT DEVICE OR ALL OF THE DEVICES? THAT'S HOW LIS
12:51PM 22 WAS USED.

12:51PM 23 BUT NONE OF THAT KIND OF ANALYSIS WAS DONE BY THE
12:51PM 24 GOVERNMENT TO PROVE THEIR ALLEGATION THAT THERANOS'S TECHNOLOGY
12:51PM 25 WAS NOT CAPABLE OF CONSISTENTLY PRODUCING ACCURATE AND RELIABLE

12:51PM 1 RESULTS.

12:51PM 2 AND WHAT YOU'RE GOING TO LEARN IS AFTER TWO YEARS OF
12:51PM 3 INVESTIGATING FROM 2016 INTO 2018, IN OR ABOUT MAY 23RD OF
12:51PM 4 2018, THE INVESTIGATORS AND PROSECUTORS IN THIS CASE HAD A
12:51PM 5 COMMUNICATION WITH THERANOS'S LAWYERS. AND THERE WAS A REQUEST
12:51PM 6 FROM THERANOS OF A COPY OF THE LIS.

12:51PM 7 BUT TWO WEEKS LATER THE GOVERNMENT DIDN'T WAIT TO GET A
12:51PM 8 COPY OF THE LIS. THEY SUBPOENAED THE LIS.

12:51PM 9 AND THEN TEN DAYS AFTER THAT THEY INDICTED SUNNY BALWANI.
12:51PM 10 THEY SUBPOENAED THE LIS BUT DIDN'T GET IT, DIDN'T DO ANY
12:51PM 11 ANALYSIS, AND THEN INDICTED SUNNY WITH AN ALLEGATION THAT
12:51PM 12 THERANOS'S TECHNOLOGY WAS NOT CAPABLE OF CONSISTENTLY PRODUCING
12:52PM 13 ACCURATE AND RELIABLE RESULTS.

12:52PM 14 THE COPY FROM THERANOS'S LAWYERS ARRIVED TWO MONTHS LATER
12:52PM 15 ON ONE OF THOSE LITTLE PORTABLE USB DRIVES. BUT THE GOVERNMENT
12:52PM 16 TECHNOLOGIST HAD PROBLEMS OPENING IT, AND THE DEPARTMENT OF
12:52PM 17 JUSTICE LEARNED THAT THEY COULDN'T OPEN THE HARD DRIVE TO LOOK
12:52PM 18 AT THE DATA. AND THAT CONTINUED UNTIL OCTOBER 5TH.

12:52PM 19 AND ANOTHER TECHNOLOGY SPECIALIST AT THE GOVERNMENT TOLD
12:52PM 20 THE INVESTIGATORS AND PROSECUTORS IN THIS CASE THAT THEY
12:52PM 21 COULDN'T OPEN THE LIS, YOU SHOULD JUST GO GET THE SERVERS FROM
12:52PM 22 THERANOS THAT HOUSED THE HARD DRIVES. AND AT THAT TIME THE
12:52PM 23 SERVERS WERE IN STORAGE.

12:52PM 24 BUT YOU'LL LEARN THAT THE GOVERNMENT NEVER OBTAINED THE
12:52PM 25 LIS, AND THEY NEVER DID ANY OF THAT ANALYSIS, ANALYSIS KIND OF

12:52PM 1 LIKE WHAT THERANOS DID TO SHOW THE FDA THAT THERANOS'S DEVICE
12:52PM 2 MET FDA STANDARDS.

12:52PM 3 AND THE REASON I MENTION ALL OF THIS IS THAT YOU'RE GOING
12:53PM 4 TO LEARN, AND AS I SHOWED YOU, THERANOS'S TEST MENU, THERANOS
12:53PM 5 OFFERED UP TO 269 TESTS TO THE PUBLIC ON ITS MENU.

12:53PM 6 THE INDICTMENT IN THIS CASE REFERENCED THREE PATIENTS,
12:53PM 7 THREE PATIENTS, THREE TESTS. AND 269 TESTS WERE OFFERED ON
12:53PM 8 THERANOS'S MENU.

12:53PM 9 IN THE THREE-PLUS YEARS THAT THERANOS WAS IN OPERATION,
12:53PM 10 THERANOS RESULTED, REPORTED 9 MILLION PATIENT RESULTS,
12:53PM 11 9 MILLION OVER THE THREE AND A HALF-PLUS YEARS.

12:53PM 12 THE GOVERNMENT ALLEGES, AGAIN, THREE PATIENTS IN THE
12:53PM 13 INDICTMENT, THREE TESTS, THREE RESULTS.

12:53PM 14 BUT WHAT YOU'RE GOING TO LEARN EVEN ABOUT THOSE THREE
12:53PM 15 PATIENTS WHO WILL COME AND TESTIFY BEFORE YOU, FOR ONE OF THOSE
12:53PM 16 PATIENTS NOT ONLY DID THE GOVERNMENT DO AN ANALYSIS OF THE
12:53PM 17 TESTING THAT THAT PATIENT UNDERWENT OR WHAT DATA LOOKED LIKE
12:53PM 18 WITHIN THERANOS WHEN THAT PATIENT GOT TESTED, THE GOVERNMENT
12:54PM 19 DOESN'T EVEN HAVE THAT PATIENT'S FIRST TEST RESULT, THE LITTLE
12:54PM 20 REPORT THAT THE PATIENT CLAIMS WAS WRONG, WHICH THAT'S NO FAULT
12:54PM 21 OF THE PATIENT, I MEAN, THEY THINK THERE'S AN ISSUE WITH THE
12:54PM 22 TEST, THAT'S FINE.

12:54PM 23 AND YOU'LL LEARN THE THING TO DO TO FIGURE OUT WHETHER
12:54PM 24 THERE'S A REAL PROBLEM WITH THAT TEST WOULD HAVE BEEN TO GO TO
12:54PM 25 LIS AND INVESTIGATE. NONE OF THAT HAPPENED HERE.

12:54PM 1 ANOTHER PATIENT YOU'RE GOING TO HEAR FROM IN THIS TRIAL
12:54PM 2 GOT AN HIV TEST. BUT YOU KNOW WHAT? THE HIV TEST WAS
12:54PM 3 ACCURATE. IT WAS NEGATIVE FOR HIV.

12:54PM 4 AND YOU'RE ALSO GOING TO LEARN THAT HIV TEST WAS NOT RUN
12:54PM 5 ON THERANOS TECHNOLOGY. IT WAS RUN ON ANOTHER COMPANY'S FDA
12:54PM 6 APPROVED TECHNOLOGY, BUT THE GOVERNMENT DIDN'T DO ANY ANALYSIS
12:54PM 7 TO FIGURE OUT WHETHER THERANOS HAD A HISTORY OF HIV PROBLEMS IN
12:54PM 8 THAT TEST PRIOR TO THAT PATIENT REPORTING OR VISITING THERANOS.
12:54PM 9 AND YOU'RE CERTAINLY GOING TO SEE NO EVIDENCE THAT SUNNY KNEW
12:54PM 10 ANYTHING WAS WRONG WITH THAT TEST.

12:54PM 11 YOU'RE GOING TO HEAR FROM A HANDFUL OF PATIENTS, THREE,
12:55PM 12 FOUR, MAYBE FIVE WHO ARE GOING TO TALK ABOUT A FEW TESTS, BUT
12:55PM 13 THE GOVERNMENT DID NO ANALYSIS OF ALL OF THERANOS'S PATIENT
12:55PM 14 TESTING DATA AND THE RELATED QUALITY CONTROL DATA OR EFFICIENCY
12:55PM 15 TESTING DATA TO FIGURE OUT WHETHER THE PROBLEM WAS A HUMAN
12:55PM 16 ERROR IN THE COLLECTION, MAYBE THE FINGERSTICK SAMPLE WAS TAKEN
12:55PM 17 WRONG, MAYBE THE VEIN DRAW WAS TAKEN WRONG, MAYBE THE
12:55PM 18 TECHNICIAN WHO RAN THE TEST WAS VERY BAD --

12:55PM 19 MR. LEACH: YOUR HONOR, I'M SORRY.

12:55PM 20 THE COURT: COUNSEL, EXCUSE ME.

12:55PM 21 MR. CAZARES: I AM WRAPPING UP.

12:55PM 22 THE COURT: THIS IS OPENING STATEMENT, NOT CLOSING
12:55PM 23 ARGUMENT.

12:55PM 24 EXCUSE ME. LET ME FINISH MY STATEMENT.

12:55PM 25 MR. CAZARES: I APOLOGIZE.

12:55PM 1 THE COURT: YOU CAN FINISH YOUR OPENING STATEMENT
12:55PM 2 AND NOT MOVE INTO ARGUMENT.

12:55PM 3 MR. CAZARES: YES. THANK YOU.

12:55PM 4 THE COURT: PLEASE PROCEED.

12:55PM 5 MR. CAZARES: THE GOVERNMENT DIDN'T OBTAIN THE
12:55PM 6 9 MILLION PATIENT RESULTS, AND YOU ARE GOING TO SEE AND LEARN
12:55PM 7 THEY DIDN'T ANALYZE THE TESTING DATA. AND THAT IS WHY WE ASK
12:55PM 8 YOU TO KEEP AN OPEN MIND WHEN YOU HEAR AND SEE THE EVIDENCE IN
12:55PM 9 THIS CASE. WAIT TO HEAR ALL OF THE EVIDENCE, NOT JUST THE
12:56PM 10 HEADLINE OR WHEN AN EMAIL SHOWS A BAD QUALITY CONTROL.

12:56PM 11 A PATIENT IS RAISING A QUESTION ABOUT A TEST. WAIT TO
12:56PM 12 HEAR THE EVIDENCE. WELL, DOES ANYONE REALLY KNOW WHAT HAPPENED
12:56PM 13 TO THAT PATIENT'S TEST OR WHY THE QUALITY CONTROL FAILED? WAIT
12:56PM 14 FOR THAT EVIDENCE OR THE LACK OF IT BECAUSE WE THINK IF YOU
12:56PM 15 WAIT AND KEEP AN OPEN MIND, LISTEN AND HEAR ALL OF THE
12:56PM 16 EVIDENCE, YOU WILL CONCLUDE THAT THE GOVERNMENT CANNOT PROVE
12:56PM 17 THEIR ALLEGATIONS. THEY CANNOT PROVE THAT THERANOS'S
12:56PM 18 TECHNOLOGY WAS NOT CAPABLE OF CONSISTENTLY PRODUCING ACCURATE
12:56PM 19 AND RELIABLE RESULTS.

12:56PM 20 THAT'S WHY AT THE END OF THIS TRIAL MY COCOUNSEL,
12:56PM 21 MR. COOPERSMITH, WILL HAVE A CHANCE TO TALK TO YOU ABOUT THE
12:56PM 22 EVIDENCE, ALL OF THE EVIDENCE INTRODUCED IN THIS TRIAL, AND
12:56PM 23 HE'LL CONNECT THE DOTS FOR YOU AND SHOW YOU HOW AND WHY THE
12:56PM 24 EVIDENCE SHOWS THAT THE GOVERNMENT CANNOT PROVE THE
12:56PM 25 ALLEGATIONS, EACH ELEMENT OF EACH CHARGE BEYOND A REASONABLE

12:56PM

1

DOUBT.

12:56PM

2

AND THAT'S WHY WE WILL ASK YOU TO FIND SUNNY BALWANI NOT

12:57PM

3

GUILTY OF EACH AND EVERY COUNT.

12:57PM

4

THANK YOU VERY MUCH FOR YOUR TIME AND ATTENTION.

12:57PM

5

THANK YOU VERY MUCH, YOUR HONOR.

12:57PM

6

THE COURT: THANK YOU, COUNSEL.

12:57PM

7

LADIES AND GENTLEMEN, AS I TOLD YOU, WE WILL BREAK TODAY.

12:57PM

8

TODAY WE'RE GOING TO FINISH AT 2:30.

12:57PM

9

WHAT I'D LIKE TO DO IS TO HAVE ABOUT A -- LET'S TAKE A 30

12:57PM

10

MINUTE BREAK NOW TO HOPEFULLY ALLOW YOU TO GET SOME

12:57PM

11

REFRESHMENTS.

12:57PM

12

AND THE GOVERNMENT WILL HAVE A WITNESS AVAILABLE AT 1:30?

12:57PM

13

MR. BOSTIC: YES, YOUR HONOR.

12:57PM

14

THE COURT: ALL RIGHT. THANK YOU. LET'S TAKE OUR

12:57PM

15

RECESS, PLEASE, AND WE'LL RECONVENE AT 1:30. THANK YOU.

12:58PM

16

(JURY OUT AT 12:58 P.M.)

12:58PM

17

THE COURT: ALL RIGHT. PLEASE BE SEATED. THANK

12:58PM

18

YOU.

12:58PM

19

THE RECORD SHOULD REFLECT THAT THE JURY HAS LEFT FOR THE

12:58PM

20

BREAK.

12:58PM

21

ANYTHING EITHER PARTY WANTS TO PUT ON THE RECORD BEFORE WE

12:58PM

22

BREAK, BEFORE I STEP DOWN?

12:58PM

23

MR. LEACH: MAY I HAVE A MOMENT, YOUR HONOR?

12:58PM

24

THE COURT: YES, OF COURSE.

12:58PM

25

(DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

12:58PM 1 MR. LEACH: VERY BRIEFLY, YOUR HONOR.

12:58PM 2 IN MOTION PRACTICE THERE WAS SUBSTANTIAL DEBATE ABOUT
12:58PM 3 WHETHER OR NOT THE DEFENSE WOULD OPEN THE DOOR TO ISSUES
12:58PM 4 RELATING TO THE LIS.

12:58PM 5 I DON'T THINK THAT DOOR COULD HAVE BEEN MORE WIDELY OPEN
12:58PM 6 THROUGH THE OPENING STATEMENT, AND I DID NOT OBJECT IN THE
12:59PM 7 MOMENT. BUT I THINK IT'S OBVIOUS THAT DOOR IS OPEN, AND I WANT
12:59PM 8 TO SAY THAT THAT'S THE GOVERNMENT'S POSITION AT THIS POINT.

12:59PM 9 THE COURT: ALL RIGHT. THANK YOU.

12:59PM 10 MR. COOPERSMITH: YOUR HONOR, AS I SAID IN OUR
12:59PM 11 MOTION PRACTICE, I KNOW THAT WE HAVE OPENED THE DOOR TO
12:59PM 12 SOMETHING, AND I THINK WE HAVE TO HAVE FURTHER DISCUSSIONS AS
12:59PM 13 TO EXACTLY WHAT THAT IS.

12:59PM 14 I BELIEVE THE GOVERNMENT CAN DEFEND ITSELF AND ARGUE THAT
12:59PM 15 IT WASN'T THEIR FAULT. THEY CAN PROBABLY ARGUE THAT IT'S
12:59PM 16 THERANOS'S FAULT.

12:59PM 17 BEYOND THAT, I DON'T THINK SO.

12:59PM 18 SO I THINK THIS IS GOING TO NEED ADDITIONAL DISCUSSION AND
12:59PM 19 BRIEFING, YOU KNOW, BEYOND WHAT WE HAVE TIME FOR RIGHT THIS
12:59PM 20 MOMENT.

12:59PM 21 BUT THE QUESTION IS NOT WHETHER WE OPEN THE DOOR. I AGREE
12:59PM 22 WITH MR. LEACH THAT WE HAVE.

12:59PM 23 THE QUESTION IS WHAT WE OPENED THE DOOR TO.

12:59PM 24 THE COURT: WELL, I SUPPOSE YOU'RE ASKING ME TO LOOK
12:59PM 25 AT THE SIZE OF THE DOOR. SOMETIMES EVEN A SMALL DOOR CAN OPEN

12:59PM 1 TO A WIDE PASTURE, CAN'T IT?

12:59PM 2 MR. COOPERSMITH: SOMETIMES THAT'S TRUE.

12:59PM 3 THE COURT: AND THAT'S WHAT WE'LL HAVE TO DISCOVER

12:59PM 4 IS WHAT IS THE GEOGRAPHY OF THE OPENED DOOR.

12:59PM 5 SO THANK YOU FOR THAT. I DID NOTICE THAT. I'LL NEED TO

01:00PM 6 REFRESH MYSELF WITH THE TRANSCRIPT ALSO TO SEE WHAT THE

01:00PM 7 GEOGRAPHICAL LIMITS MIGHT BE.

01:00PM 8 SO ENJOY YOUR BREAK. WE'LL SEE YOU BACK AT 1:30.

01:00PM 9 MR. LEACH: THANK YOU.

01:00PM 10 (LUNCH RECESS TAKEN AT 1:00 P.M.)

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AFTERNOON SESSION

(JURY IN AT 1:36 P.M.)

THE COURT: WE'RE BACK ON THE RECORD. ALL COUNSEL
ARE PRESENT. MR. BALWANI IS PRESENT.

THE JURY AND ALTERNATES ARE PRESENT.

DOES THE GOVERNMENT HAVE A WITNESS TO CALL?

MR. BOSTIC: YES, YOUR HONOR.

THE UNITED STATES CALLED ERIKA CHEUNG.

THE COURT: ALL RIGHT. THANK YOU.

GOOD AFTERNOON.

THE WITNESS: GOOD AFTERNOON.

THE COURT: IF YOU WOULD STAND BY OUR COURTROOM
DEPUTY AND RAISE YOUR RIGHT HAND, SHE HAS A QUESTION FOR YOU.

THE CLERK: RAISE YOUR RIGHT HAND.

(GOVERNMENT'S WITNESS, ERIKA CHEUNG, WAS SWORN.)

THE WITNESS: YES.

THE COURT: PLEASE HAVE A SEAT. MAKE YOURSELF
COMFORTABLE. FEEL FREE TO ADJUST THE CHAIR AND MICROPHONE AS
YOU NEED.

I'LL ENCOURAGE YOU TO SPEAK DIRECTLY INTO THE MICROPHONE.

WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME
AND THEN SPELL IT, PLEASE.

THE WITNESS: OKAY. MY NAME IS ERIKA CHEUNG, AND
THAT'S SPELLED E-R-I-K-A, CHEUNG, C-H-E-U-N-G.

THE COURT: THANK YOU.

01:38PM 1
01:38PM 2
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01:39PM 25

COUNSEL.

DIRECT EXAMINATION

BY MR. BOSTIC:

Q. GOOD AFTERNOON, MS. CHEUNG.

A. GOOD AFTERNOON.

Q. IF YOU ARE FULLY VACCINATED, I UNDERSTAND THAT THE COURT
WILL ALLOW YOU TO TESTIFY WITHOUT A MASK?

A. OKAY. I'M FULLY VACCINATED.

THE COURT: YES. PLEASE.

BY MR. BOSTIC:

Q. MS. CHEUNG, WAS THERE A TIME WHEN YOU WORKED FOR A COMPANY
CALLED THERANOS?

A. YES.

Q. AND WHEN YOU WERE AT THERANOS, WHAT WAS YOUR JOB TITLE AND
WHAT DID YOU DO THERE?

A. MY JOB TITLE WAS LAB ASSOCIATE, AND I STARTED IN THE
COMPANY WORKING IN THE RESEARCH AND DEVELOPMENT LAB.

AND THEN I WAS TRANSITIONED TO TAKING THE PRODUCTS THAT WE
DEVELOPED IN RESEARCH AND DEVELOPMENT INTO THE CLINICAL LAB.

AND THE TITLE WAS THE SAME FOR BOTH POSITIONS.

Q. THANK YOU.

DO YOU REMEMBER WHAT YOUR APPROXIMATE DATES OF EMPLOYMENT
WERE AT THE COMPANY?

A. I WORKED AT THERANOS OCTOBER OF 2013 TO APRIL OF 2014.

Q. AND HOW DID YOUR EMPLOYMENT END? WERE YOU TERMINATED OR

01:39PM 1 LAID OFF? DID YOU RESIGN?

01:39PM 2 A. I RESIGNED.

01:39PM 3 Q. AND WHY DID YOU RESIGN FROM YOUR JOB IN APRIL OF 2014?

01:39PM 4 A. I RESIGNED FROM THERANOS BECAUSE I WAS UNCOMFORTABLE WITH
01:39PM 5 THE FACT THAT WE WERE TESTING ON PATIENTS WITHOUT -- WITH
01:39PM 6 TECHNOLOGY THAT I FELT WASN'T PRODUCING RELIABLE RESULTS FOR
01:39PM 7 THOSE PATIENTS.

01:39PM 8 Q. I'D LIKE TO ASK YOU SOME MORE ABOUT THAT, BUT FIRST IF I
01:39PM 9 COULD ASK YOU A COUPLE OF QUESTIONS ABOUT YOUR BACKGROUND.

01:39PM 10 CAN YOU SUMMARIZE YOUR EDUCATION FOR US, PLEASE?

01:39PM 11 A. I -- AT THE TIME AT THERANOS I HAD RECENTLY RECEIVED MY
01:39PM 12 UNDERGRADUATE DEGREE FROM THE UNIVERSITY OF CALIFORNIA BERKELEY
01:40PM 13 IN MOLECULAR AND CELL BIOLOGY AND LINGUISTICS.

01:40PM 14 Q. AND HAD YOU HAD ANY EMPLOYMENT HISTORY IN BETWEEN
01:40PM 15 OBTAINING YOUR DEGREE AND WORKING AT THERANOS?

01:40PM 16 A. BETWEEN OBTAINING -- NO. THIS WAS MY FIRST JOB OUT OF
01:40PM 17 COLLEGE.

01:40PM 18 Q. CAN YOU TELL US HOW YOU FIRST HEARD ABOUT THERANOS AND HOW
01:40PM 19 YOU BECAME AWARE OF THE JOB AT THE COMPANY?

01:40PM 20 A. I FIRST LEARNED ABOUT THERANOS AT A JOB CAREER FAIR THAT
01:40PM 21 WAS ON THE UNIVERSITY'S CAMPUS.

01:40PM 22 AND ESSENTIALLY WHEN I HAD ARRIVED THERE, THERE WASN'T A
01:40PM 23 LOT OF COMPANIES THAT WERE IN BIOTECHNOLOGY, EXCEPT FOR
01:40PM 24 THERANOS, AND THEY HAD A LINE OUT THE DOOR OF PEOPLE REALLY
01:40PM 25 WANTING TO WORK FOR THEM.

01:40PM 1 AND SO I WAITED IN LINE TO TALK TO THE RECRUITER, AND THEY
01:40PM 2 BASICALLY TOLD ME THAT THEY WERE LOOKING FOR ENTRY LEVEL
01:40PM 3 SCIENTISTS AND ASSOCIATES.

01:40PM 4 Q. SO IT SOUNDS LIKE THERE WAS SOME EXCITEMENT ABOUT THE
01:40PM 5 COMPANY IN GENERAL?

01:40PM 6 A. THERE WAS A LOT OF EXCITEMENT ABOUT THE COMPANY. I THINK
01:41PM 7 AT THAT TIME, ASIDE FROM WHAT PEOPLE WERE TALKING ABOUT
01:41PM 8 SPECIFICALLY IN THE VALLEY, THERE WASN'T A TON KNOWN EXCEPT FOR
01:41PM 9 THEIR WEBSITE AND MAYBE ABOUT TWO ARTICLES, ONE FROM "THE
01:41PM 10 WALL STREET JOURNAL" AND ANOTHER ABOUT WHAT THE COMPANY WAS
01:41PM 11 DOING AND A COUPLE YOUTUBE VIDEOS.

01:41PM 12 Q. WERE YOU PERSONALLY EXCITED ABOUT THE PROSPECT OF THE
01:41PM 13 COMPANY AT THAT TIME?

01:41PM 14 A. I WAS VERY EXCITED TO BE APART OF THE COMPANY.

01:41PM 15 Q. AND YOU SAID NOT MUCH WAS KNOWN.

01:41PM 16 WHAT DID YOU KNOW ABOUT THE COMPANY AT THE TIME THAT MADE
01:41PM 17 YOU EXCITED ABOUT IT?

01:41PM 18 A. THERE WAS A NUMBER OF THINGS. I THINK A BIG ONE WAS
01:41PM 19 THERANOS WAS CREATING THIS SORT OF INNOVATIVE TECHNOLOGY WHERE
01:41PM 20 INSTEAD OF GETTING ALL OF YOUR BLOOD DIAGNOSTICS BY VENOUS DRAW
01:41PM 21 YOU CAN DO IT BY FINGERSTICK. SO THAT WAS REALLY EXCITING TO
01:41PM 22 SEE WHAT THEY WERE WORKING ON, AND THE SCIENCE SEEMED VERY
01:41PM 23 COMPELLING TO START OFF AS A -- START OFF MY CAREER.

01:41PM 24 I WAS REALLY ATTRACTED TO THE FOUNDER OF THE COMPANY WHO
01:41PM 25 HAD DROPPED OUT OF STANFORD AT AGE 19 TO START THIS COMPANY,

01:42PM 1 AND SHE SEEMED TO HAVE A LOT OF CHARISMA ABOUT HER, AND IT JUST
01:42PM 2 SEEMED LIKE AN INTERESTING PERSON TO WORK WITH.

01:42PM 3 THE BLOOD TESTS WERE ALSO AFFORDABLE, AND THEY HAD PRICE
01:42PM 4 TRANSPARENCY AROUND THEM, SO IT SEEMED LIKE A GOOD OPPORTUNITY
01:42PM 5 TO HELP SUPPORT IN MAKING HEALTH CARE MORE ACCESSIBLE FOR
01:42PM 6 PEOPLE, WHICH WAS A BIG PERSONAL MISSION OF MINE.

01:42PM 7 AND IT WAS JUST -- IT SEEMED LIKE AN UP AND COMING
01:42PM 8 COMPANY, AND SO I WAS JUST REALLY HAPPY THAT I COULD
01:42PM 9 POTENTIALLY HAVE AN OPPORTUNITY TO WORK THERE STRAIGHT OUT OF
01:42PM 10 COLLEGE.

01:42PM 11 Q. YOU MENTIONED THE FOUNDER OF THE COMPANY.

01:42PM 12 ARE YOU REFERRING TO ELIZABETH HOLMES?

01:42PM 13 A. YES.

01:42PM 14 Q. DID THAT INTEREST CAUSE YOU TO PURSUE A JOB AT THERANOS?

01:42PM 15 A. YES.

01:42PM 16 Q. AND WHAT WERE THE STEPS IN PURSUING THAT JOB?

01:42PM 17 A. SO PURSUING THAT JOB, THE FIRST STEP IS THAT I GAVE AT
01:42PM 18 THAT CAREER FAIR MY RESUME TO ONE OF THE RECRUITERS.

01:42PM 19 THE RECRUITERS BASICALLY CALLED ME BACK AND SAID, HEY, WE
01:42PM 20 HAVE JOB OPPORTUNITIES. I DIDN'T REALLY KNOW WHAT JOB I WAS
01:43PM 21 INTERVIEWING FOR.

01:43PM 22 BUT AFTER THAT I MET ON THE PHONE WITH ONE OF THE HR
01:43PM 23 MANAGERS, AND THEN THE PRODUCT MANAGER, AND THEN WENT IN FOR AN
01:43PM 24 INTERVIEW WITH TWO SCIENTISTS, AND THEN I HAD A FINAL INTERVIEW
01:43PM 25 WITH SUNNY BALWANI AND ELIZABETH HOLMES.

01:43PM 1 Q. WHEN YOU INTERVIEWED WITH MR. BALWANI AND MS. HOLMES, WERE
01:43PM 2 THOSE INTERVIEWS TOGETHER OR DID YOU SPEAK TO THEM
01:43PM 3 INDIVIDUALLY?

01:43PM 4 A. I SPOKE TO THEM INDIVIDUALLY, AND THEY WERE BACK TO BACK.

01:43PM 5 Q. AND WHAT DO YOU REMEMBER ABOUT THOSE CONVERSATIONS?

01:43PM 6 FIRST LET'S START WITH YOUR CONVERSATION WITH MS. HOLMES,
01:43PM 7 IF YOU REMEMBER ANY.

01:43PM 8 A. SO MY CONVERSATION WITH MS. HOLMES, I REMEMBER BASICALLY
01:43PM 9 GOING IN THERE, AND SHE WAS MY LAST INTERVIEW BEFORE I GOT THE
01:43PM 10 JOB.

01:43PM 11 WE TALKED A LITTLE BIT ABOUT WHAT WOULD BE ENTAILED
01:43PM 12 BECAUSE I STILL WASN'T VERY SURE WHAT JOB I WAS APPLYING FOR,
01:43PM 13 SO SHE SUGGESTED INSTEAD OF PUTTING ME IN THE CLINICAL SETTING,
01:44PM 14 PUTTING ME IN THE RESEARCH LAB.

01:44PM 15 I TRIED TO ASK HER A COUPLE OF QUESTIONS ABOUT THE
01:44PM 16 TECHNOLOGY, BUT, THEY'RE LIKE, YOU'LL FIND OUT ONCE YOU WORK
01:44PM 17 FOR THE COMPANY.

01:44PM 18 AND I THINK THERE WAS -- AT THAT TIME THERE WAS A BIT OF
01:44PM 19 STAR STRUCKNESS AND WAS, LIKE, OH, I GET AN OPPORTUNITY TO MEET
01:44PM 20 WITH THE FOUNDER OF THE COMPANY EVEN THOUGH I'M JUST APPLYING
01:44PM 21 FOR AN ENTRY LEVEL POSITION.

01:44PM 22 SO I WAS A BIT SURPRISED THAT SHE WAS WILLING TO PUT IN
01:44PM 23 THAT TIME AND ENERGY TO INTERVIEW ME.

01:44PM 24 Q. AND THEN SAME QUESTION FOR YOUR CONVERSATION WITH
01:44PM 25 MR. BALWANI.

01:44PM 1 ACTUALLY LET ME ASK, WHAT WAS YOUR UNDERSTANDING AT THE
01:44PM 2 TIME OF MR. BALWANI'S POSITION AT THE COMPANY?

01:44PM 3 A. MR. BALWANI WAS THE COO OF THE COMPANY.

01:44PM 4 Q. AND DID YOU HAVE AN UNDERSTANDING AS TO WHERE THAT PUT HIM
01:44PM 5 IN THE ORG CHART RELATIVE TO MS. HOLMES, FOR EXAMPLE?

01:44PM 6 A. I WAS UNDER THE IMPRESSION THAT THEY WERE KIND OF WORKING
01:44PM 7 SIDE BY SIDE, THAT THEY WERE BOTH AT THE TOP TIER OF THE
01:44PM 8 COMPANY.

01:44PM 9 Q. AND WHAT DO YOU REMEMBER FROM YOUR INTERVIEW WITH
01:45PM 10 MR. BALWANI WHEN YOU WERE APPLYING FOR THE JOB?

01:45PM 11 A. I REMEMBER IT WAS INITIALLY A LITTLE TOUGH, AND HE ASKED
01:45PM 12 ME A LOT OF QUESTIONS ABOUT MY PRIOR EXPERIENCE.

01:45PM 13 I WORKED AT A LAB AT UCSF. HE WAS REALLY CURIOUS AS TO
01:45PM 14 WHY I DOUBLE MAJORED IN LINGUISTICS AND THAT SEEMED KIND OF
01:45PM 15 ODD. AND I TOLD HIM THAT WAS A HOBBY OF MINE.

01:45PM 16 AND HE SEEMED TO BE SORT OF, YEAH, JUST ASKING ME LOTS OF
01:45PM 17 QUESTIONS BUT SOFTENED WHEN I TALKED ABOUT THE FACT THAT I WAS
01:45PM 18 REALLY INTERESTED WITH ELIZABETH HOLMES AND WAS REALLY
01:45PM 19 IMPRESSED WITH WHAT THE COMPANY WAS DOING, AND EVEN THERE WAS
01:45PM 20 NOT A LOT KNOWN BY THEM, BUT THERE SEEMED AT LEAST AS AN
01:45PM 21 OUTSIDER THERE WAS LOTS OF INTERESTING THINGS.

01:45PM 22 AND AFTER THAT MOMENT THEN HE SAID, OKAY, WAIT HERE, AND
01:45PM 23 WE'LL HAVE ELIZABETH CONDUCT THE FINAL INTERVIEW.

01:45PM 24 Q. AFTER THOSE TWO FINAL INTERVIEWS, DID YOU RECEIVE AN OFFER
01:45PM 25 OF EMPLOYMENT FROM THERANOS?

01:45PM 1 A. YES.

01:45PM 2 Q. AND DID YOU ACCEPT?

01:45PM 3 A. YES.

01:45PM 4 Q. WHEN YOU STARTED AT THE COMPANY, DID YOU SIGN AN NDA, A

01:46PM 5 NONDISCLOSURE AGREEMENT?

01:46PM 6 A. YES.

01:46PM 7 Q. AND WHAT DO YOU REMEMBER GENERALLY, IF ANYTHING, ABOUT HOW

01:46PM 8 CONFIDENTIAL INFORMATION OR SECRET INFORMATION WAS HANDLED AT

01:46PM 9 THERANOS?

01:46PM 10 A. WE WERE -- SO BEFORE I EVEN JOINED THE COMPANY EVEN WHILE

01:46PM 11 INTERVIEWING, THEY HAD ME SIGN AN NDA.

01:46PM 12 WHEN WE FIRST JOINED THE COMPANY, THEY ALSO HAD US SIGN AN

01:46PM 13 NDA.

01:46PM 14 AND THEN WE HAD AN INTRODUCTORY INTERVIEW WITH

01:46PM 15 CHRISTIAN HOLMES, WHO WAS ONE OF THE LEAD PRODUCT MANAGERS OF

01:46PM 16 THE COMPANY. AND HE ESSENTIALLY TOLD US THAT CONFIDENTIALITY

01:46PM 17 WAS VERY IMPORTANT FOR THE COMPANY, THAT THEY DIDN'T WANT

01:46PM 18 COMPETITORS TO KNOW ABOUT TRADE SECRETS, ABOUT THE TECHNOLOGY

01:46PM 19 THAT WE WERE WORKING ON.

01:46PM 20 AND EVEN TO THE EXTENT THAT WE WERE NOT ALLOWED TO PUT ON

01:46PM 21 OUR LINKEDIN THAT WE WORKED FOR THE COMPANY, AND WE HAD TO BE

01:46PM 22 QUITE VAGUE ABOUT WHAT OUR ROLES AND RESPONSIBILITIES AND

01:46PM 23 DUTIES WERE TO ENSURE THAT NO COMPETITORS WOULD FIND OUT WHAT

01:47PM 24 WE WERE WORKING ON OR ANY EXTERNAL ORGANIZATIONS KNEW EXACTLY

01:47PM 25 WHAT WAS HAPPENING INTERNALLY.

01:47PM 1 Q. AND YOU MENTIONED THE NAME CHRISTIAN HOLMES.

01:47PM 2 IS THAT PERSON RELATED TO ELIZABETH HOLMES?

01:47PM 3 A. THAT'S HER BROTHER.

01:47PM 4 Q. WHEN YOU FIRST STARTED AT THE COMPANY, WHAT WAS YOUR
01:47PM 5 UNDERSTANDING OF WHAT BUSINESS THE COMPANY WAS IN? WHAT WAS IT
01:47PM 6 DOING?

01:47PM 7 A. SO MY UNDERSTANDING WAS THAT THE BUSINESS WAS ESSENTIALLY
01:47PM 8 CREATING THESE MEDICAL DEVICES AND THESE BLOOD TESTING MACHINES
01:47PM 9 WHERE, AGAIN, WE WOULD BE ABLE TO TAKE A FINGERSTICK OF BLOOD
01:47PM 10 AND PROCESS ALL OF THE DIFFERENT BLOOD SAMPLES THAT A PATIENT
01:47PM 11 WOULD NORMALLY ORDER WHEN THEY WOULD GO SEE A DOCTOR.

01:47PM 12 SO IT WAS A COMBINATION BETWEEN THIS MEDICAL DEVICE
01:47PM 13 COMPANY IN ADDITION TO PATIENT SERVICES. SO WE WERE ALSO EN
01:47PM 14 ROUTE -- ALREADY IN THE PROGRESS WHEN I STARTED WORKING FOR THE
01:48PM 15 COMPANY OF ACTIVELY TESTING PATIENTS.

01:48PM 16 Q. SO LET'S TAKE THOSE TWO AREAS ONE AT A TIME.

01:48PM 17 A. OKAY.

01:48PM 18 Q. FIRST, YOU MENTIONED DEVELOPING MEDICAL DEVICES TO TEST
01:48PM 19 BLOOD; IS THAT CORRECT?

01:48PM 20 A. YES.

01:48PM 21 Q. AND DID THERANOS HAVE ANY COMPETITORS IN THAT FIELD?

01:48PM 22 A. YES. SO THE TWO MAJOR COMPETITORS THAT WE TALKED ABOUT IN
01:48PM 23 THE COMPANY WERE LABCORP AND QUEST DIAGNOSTICS.

01:48PM 24 Q. AND LET'S BREAK APART, IF WE CAN, THE FIELD OF CREATING
01:48PM 25 MEDICAL DEVICES AND THE FIELD OF TESTING BLOOD.

01:48PM 1

A. YES.

01:48PM 2

Q. SO THE BUSINESS OF LABCORP AND QUEST, WHICH BUCKET DID

01:48PM 3

THEY FALL INTO? WERE THEY MEDICAL DEVICE COMPANIES OR BLOOD

01:48PM 4

TESTING LABS?

01:48PM 5

A. THEY WERE BLOOD TESTING LABS.

01:48PM 6

Q. OH, SO THEY WERE COMPETITORS TO THERANOS IN THAT AREA?

01:48PM 7

A. YES.

01:48PM 8

Q. AND HOW ABOUT IN THE DEVELOPING AND MANUFACTURING MEDICAL

01:48PM 9

DEVICES FIELD, DID THERANOS HAVE COMPETITORS IN THAT ACTIVITY?

01:49PM 10

A. YES.

01:49PM 11

Q. AND AS YOU UNDERSTOOD IT AT THE TIME, WHO WERE THE

01:49PM 12

COMPETITORS THERE?

01:49PM 13

A. SO IN TERMS OF THE COMPETITORS, IN TERMS OF JUST BLOOD

01:49PM 14

DIAGNOSTIC DEVICES, THOSE ARE PEOPLE LIKE SIEMENS, DIASORIN,

01:49PM 15

BASICALLY ANYONE WHO DEVELOPED MEDICAL DEVICES THAT TEST BLOOD.

01:49PM 16

I MEAN, THERE WERE A COUPLE THAT DID FINGERSTICK

01:49PM 17

TECHNOLOGY, TOO. YOU HAVE COMPANIES THAT DO BLOOD GLUCOSE

01:49PM 18

MONITORING OR IOSTAT FINGERSTICK COLLECTION FOR EMERGENCY

01:49PM 19

VEHICLES, BUT THAT'S GENERALLY ANY COMPANY THAT DEVELOPS

01:49PM 20

MEDICAL DEVICES THAT YOU'RE ABLE TO TEST BLOOD IS THERANOS'S

01:49PM 21

COMPETITOR.

01:49PM 22

Q. YOU MENTIONED SOME COMPANIES THAT DID FINGERSTICK TESTING.

01:49PM 23

WERE YOU AWARE IN 2013 OF THESE OTHER COMPANIES THAT WERE

01:49PM 24

ALSO DOING BLOOD TESTING BY FINGERSTICK?

01:49PM 25

A. YES.

01:49PM 1 Q. WHEN YOU STARTED AT THE COMPANY, CAN YOU TELL US ABOUT
01:50PM 2 YOUR INITIAL JOB TITLE AND YOUR ROLE AT THE COMPANY WHEN YOU
01:50PM 3 FIRST STARTED WORKING THERE?

01:50PM 4 A. WHEN I FIRST STARTED WORKING FOR THE COMPANY, I WAS A LAB
01:50PM 5 ASSOCIATE FOR THE RESEARCH AND DEVELOPMENT LAB, SPECIFICALLY
01:50PM 6 FOCUSED ON IMMUNOASSAYS, AND THAT TEAM WAS CALLED ELISA.

01:50PM 7 Q. AND GENERALLY SPEAKING, WHAT DID THE RESEARCH AND
01:50PM 8 DEVELOPMENT LAB DO AT THERANOS?

01:50PM 9 A. SO THE RESEARCH AND DEVELOPMENT LAB WAS ESSENTIALLY
01:50PM 10 CREATING A LOT OF THESE TESTS THAT COULD BE RUN ON FINGERSTICK
01:50PM 11 ON THE PROPRIETARY DEVICE THAT THERANOS CREATED CALLED THE
01:50PM 12 EDISON.

01:50PM 13 SO THEY WERE IN CHARGE OF CREATING THE TEST AND VALIDATING
01:50PM 14 THEM AND MAKING SURE THAT DID THEY HIT THE STANDARDS NECESSARY
01:50PM 15 TO ACTUALLY TAKE THEM TO MARKET. SO ARE THEY ACCURATE? DO
01:50PM 16 THEY SHOW CONSISTENT RESULTS?

01:50PM 17 AND ONCE WE HAD DONE THAT VALIDATION, YOU WOULD SORT OF
01:50PM 18 CARRY OFF THE TEST TO THE CLINICAL SETTING WHERE THE PATIENT
01:50PM 19 PROCESSING HAPPENED.

01:51PM 20 Q. IS IT CORRECT THEN THAT FOR A GIVEN TEST OR ASSAY, THE R&D
01:51PM 21 WORK GENERALLY HAPPENS BEFORE THE TEST IS MOVED INTO THE
01:51PM 22 CLINICAL LAB?

01:51PM 23 A. YES.

01:51PM 24 Q. DOES THAT MEAN THAT THE R&D WORK IS COMPLETE BEFORE THE
01:51PM 25 TEST IS USED ON ACTUAL PATIENTS?

01:51PM 1

A. YES.

01:51PM 2

Q. WHEN YOU WERE WORKING IN THE R&D LAB, WHAT WAS THE

01:51PM 3

STRUCTURE OF THAT DEPARTMENT AT THE TIME? HOW DID YOU FIT INTO

01:51PM 4

THE ORG CHART?

01:51PM 5

A. TO THE ORG CHART?

01:51PM 6

SO THE WAY THAT THE IMMUNOASSAY TEAM OR THE ELISA TEAM WAS

01:51PM 7

STRUCTURED AT THE TIME THAT I ENTERED THERE, YOU HAD THE CORE

01:51PM 8

ELISA TEAM WHICH AT THE TOP YOU HAD SHARADA WHO WAS A HEAD

01:51PM 9

SCIENTIST, AND THEN BELOW HER WERE TEAM LEADS, AND BELOW THAT

01:51PM 10

WERE SORT OF LIKE RESEARCH SCIENTISTS OR ASSOCIATES, AND THEN

01:51PM 11

BELOW THAT WERE LAB ASSOCIATES.

01:52PM 12

SO I WAS AT THE BOTTOM OF THE SORT OF ORGANIZATIONAL

01:52PM 13

STRUCTURE.

01:52PM 14

Q. AND DID YOU SAY THAT SHARADA WAS IN CHARGE OF THAT GROUP?

01:52PM 15

A. YES.

01:52PM 16

Q. AND DID YOU KNOW AT THE TIME TO WHOM SHARADA REPORTED TO?

01:52PM 17

A. SHARADA REPORTED TO SUNNY AND ELIZABETH.

01:52PM 18

Q. YOU TESTIFIED THAT GENERALLY RESEARCH AND DEVELOPMENT WORK

01:52PM 19

FOR A TEST OCCURRED BEFORE A TEST WAS USED ON PATIENTS; IS THAT

01:52PM 20

RIGHT?

01:52PM 21

A. GENERALLY, YES.

01:52PM 22

Q. AND WHEN YOU STARTED WORKING AT THE COMPANY IN OCTOBER OF

01:52PM 23

2013, WAS THERANOS ALREADY OFFERING BLOOD TESTS TO PATIENTS?

01:52PM 24

A. YES.

01:52PM 25

Q. AND DOES THAT MEAN THAT THE COMPANY WASN'T DOING ANY R&D

01:52PM 1 WORK AT THE TIME?

01:52PM 2 A. NO.

01:52PM 3 Q. WHAT R&D WORK WAS THE COMPANY DOING STILL?

01:52PM 4 A. SO THE COMPANY WAS STILL DOING VALIDATION STUDIES FOR

01:52PM 5 THESE TESTS THAT WE WERE TESTING ON PATIENTS.

01:52PM 6 SO THERE WAS STILL RESIDUAL RESEARCH AND DEVELOPMENT WORK

01:53PM 7 AND VALIDATION WORK THAT HAD TO OCCUR BEFORE WE WERE TESTING

01:53PM 8 THEM LIVE WITH PATIENTS, AND THERE WERE A LOT OF STUDIES EVEN

01:53PM 9 FOR THE TESTS THAT WERE LIVE FOR PATIENTS THAT WERE STILL

01:53PM 10 ONGOING.

01:53PM 11 Q. AND SO THERE WAS CONTINUING RESEARCH AND DEVELOPMENT WORK

01:53PM 12 EVEN FOR TESTS THAT WERE ALREADY USED ON PATIENTS?

01:53PM 13 A. YES.

01:53PM 14 MR. COOPERSMITH: OBJECTION. LEADING, YOUR HONOR.

01:53PM 15 THE COURT: OVERRULED. THE ANSWER MAY REMAIN.

01:53PM 16 YOU CAN ASK ANOTHER QUESTION.

01:53PM 17 BY MR. BOSTIC:

01:53PM 18 Q. WHEN YOU WORKED IN -- LET ME, JUST TO CLARIFY, YOU

01:53PM 19 MENTIONED A TERM ELISA. YOU WERE PART OF THE ELISA GROUP IN

01:53PM 20 R&D; IS THAT RIGHT?

01:53PM 21 A. YES.

01:53PM 22 Q. AND WHAT DOES THAT TERM "ELISA" REFER TO?

01:53PM 23 A. ELISA IS IN REFERENCE TO A SPECIFIC TESTING METHODOLOGY

01:53PM 24 THAT WE USE. SO IT'S A TYPE OF ASSAY OR A TYPE OF TEST. SO

01:53PM 25 IT'S A SPECIFIC TYPE OF CHEMISTRY THAT YOU USE IN ORDER TO BE

01:54PM 1 ABLE TO DETERMINE WHAT SOMEONE'S HEALTH RESULTS ARE FOR A
01:54PM 2 CERTAIN SUBSET OF TESTS.

01:54PM 3 Q. FROM YOUR WORK IN RESEARCH AND DEVELOPMENT, DID YOU BECOME
01:54PM 4 GENERALLY FAMILIAR WITH THE DEVICES THAT THERANOS WAS USING FOR
01:54PM 5 DEVELOPING ITS BLOOD TESTS AT THE TIME?

01:54PM 6 A. YES.

01:54PM 7 Q. AND HOW ABOUT WHEN YOU WORKED LATER IN THE CLINICAL LAB,
01:54PM 8 DID YOU ALSO BECOME FAMILIAR WITH THE DEVICES THAT THERANOS WAS
01:54PM 9 USING TO ACTUALLY RUN PATIENT SAMPLE TESTS?

01:54PM 10 A. YES.

01:54PM 11 Q. DID THERANOS -- LET ME ASK, DID YOU BECOME FAMILIAR WITH
01:54PM 12 THE TYPES OF TESTS, GENERALLY SPEAKING, THAT WERE RUN ON THOSE
01:54PM 13 KINDS OF DEVICES?

01:54PM 14 A. YES.

01:54PM 15 Q. AND DID THERANOS MANUFACTURE ITS OWN BLOOD ANALYZERS?

01:55PM 16 A. IT DID.

01:55PM 17 Q. AND WHICH OF THOSE IN-HOUSE MANUFACTURED ANALYZERS DID YOU
01:55PM 18 BECOME FAMILIAR WITH WHEN YOU WERE AT THE COMPANY?

01:55PM 19 A. I BECAME FAMILIAR WITH THE EDISON DEVICE.

01:55PM 20 Q. AND WERE THERE MULTIPLE VERSIONS OF THE EDISON DEVICE THAT
01:55PM 21 YOU KNEW ABOUT?

01:55PM 22 A. YEAH. SO THERE WAS THE EDISON 3.0, AND THE EDISON 3.5.

01:55PM 23 Q. CAN I ASK YOU TO TURN --

01:55PM 24 ACTUALLY, MAY I APPROACH, YOUR HONOR?

01:55PM 25 THE COURT: YES.

01:55PM 1 MR. COOPERSMITH, YOU HAVE THIS BINDER?

01:55PM 2 MR. COOPERSMITH: I DO.

01:55PM 3 MR. BOSTIC: AND THE COURT HAS A COPY.

01:55PM 4 THE COURT: I DO.

01:55PM 5 BY MR. BOSTIC:

01:55PM 6 Q. MS. CHEUNG, IF I COULD ASK YOU TO TURN IN THIS BINDER TO

01:56PM 7 TAB 5388.

01:56PM 8 LET ME KNOW ONCE YOU'RE THERE.

01:56PM 9 A. I'M HERE.

01:56PM 10 Q. AND AT TAB 5388, DO YOU SEE AN IMAGE OF A DEVICE?

01:56PM 11 A. YES.

01:56PM 12 Q. AND CAN YOU IDENTIFY THAT DEVICE FOR US?

01:56PM 13 A. THAT IS THE EDISON DEVICE.

01:56PM 14 Q. AND IS THIS A FAIR AND ACCURATE DEPICTION OF THE DEVICE

01:56PM 15 MADE BY THERANOS?

01:56PM 16 A. YES.

01:56PM 17 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS

01:56PM 18 EXHIBIT 5388 INTO EVIDENCE.

01:56PM 19 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

01:56PM 20 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:56PM 21 (GOVERNMENT'S EXHIBIT 5388 WAS RECEIVED IN EVIDENCE.)

01:56PM 22 BY MR. BOSTIC:

01:56PM 23 Q. SO, MS. CHEUNG, ARE WE LOOKING ON THE SCREEN NOW AT A

01:56PM 24 PICTURE OF THE EDISON BLOOD ANALYZERS?

01:56PM 25 A. YES.

01:56PM 1 Q. AND WE CAN SEE WHAT IT LOOKS LIKE FROM THIS PICTURE, BUT
01:56PM 2 CAN YOU DESCRIBE IT FOR US IN TERMS OF ITS DIMENSIONS? HOW BIG
01:56PM 3 WAS IT?

01:56PM 4 A. SO THIS IS ABOUT THE SIZE OF A -- LIKE THE PC COMPUTERS
01:56PM 5 ROUGHLY. SO IT WOULD BE MAYBE ABOUT THE SIZE OF A PRINTER.

01:57PM 6 Q. SO IF YOU HAD TO ESTIMATE THE HEIGHT OF THIS DEVICE, COULD
01:57PM 7 YOU GIVE US YOUR BEST ESTIMATE?

01:57PM 8 A. MY BEST ESTIMATE WOULD BE IT'S PROBABLY LIKE 1.5 FEET TO
01:57PM 9 2 FEET, YEAH.

01:57PM 10 Q. AND YOUR JOB -- YOUR ROLE IN R&D AND THE CLINICAL LAB, DID
01:57PM 11 IT REQUIRE YOU TO OPERATE THE EDISON DEVICE?

01:57PM 12 A. YES.

01:57PM 13 Q. AND DID YOU RUN THE SAMPLES ON THE EDISON DEVICE?

01:57PM 14 A. YES.

01:57PM 15 Q. AND CAN YOU DESCRIBE FOR US WHAT THAT ENTAILED? WHAT THE
01:57PM 16 STEPS WERE TO ACTUALLY GETTING A SAMPLE AND RUNNING A TEST ON
01:57PM 17 THIS DEVICE?

01:57PM 18 A. YEAH. SO TYPICALLY WE WOULD HAVE -- SHOULD I DO -- SHOULD
01:57PM 19 I DO A PATIENT SAMPLE?

01:57PM 20 Q. PLEASE.

01:57PM 21 A. SO SAY IF WE RECEIVED A PATIENT SAMPLE, ESSENTIALLY WE
01:57PM 22 WOULD GET A CALL AND ORDER AND SAY A PATIENT WANTS A VITAMIN D
01:57PM 23 SAMPLE.

01:57PM 24 SO THE PHLEBOTOMIST OR THE SHIPPING CONTAINERS WOULD COME
01:57PM 25 IN WITH THIS TINY NANOTAINER BLOOD SAMPLE. WE WOULD TAKE THAT,

01:58PM 1 SCAN IT, SEE ALL OF THE TESTS THAT WE NEEDED TO DO.

01:58PM 2 WE WOULD SOMETIMES HAVE TO GIVE IT OVER TO OTHER TEAMS AS
01:58PM 3 WELL TO TAKE FROM THIS TINY BLOOD SAMPLE.

01:58PM 4 AND THEN WE WOULD TAKE THAT, PUT IT ON THIS MACHINE CALLED
01:58PM 5 A TECAN, WHICH WAS A LIQUID HANDLING ROBOT THAT WOULD TAKE
01:58PM 6 SMALL SAMPLES FROM THIS TINY CONTAINER INTO THIS CARTRIDGE.

01:58PM 7 AND SO WE WOULD HAVE THESE CARTRIDGES, AND FILL WITH THE
01:58PM 8 TINY BLOOD SAMPLE. WE WOULD TAKE THAT CARTRIDGE, BRING IT TO
01:58PM 9 THE MACHINE, AND USE THE TOUCHSCREEN, AND YOU WOULD OPEN THE
01:58PM 10 MACHINE, AND YOU WOULD SCAB THE BAR CODE ONTO THE CARTRIDGE,
01:58PM 11 AND THEN YOU PUT THE CARTRIDGE IN. YOU CONFIRM THAT THE RIGHT
01:58PM 12 TEST WAS THERE, AND THEN YOU WOULD HIT START.

01:58PM 13 AND THEN ONCE IT WOULD RUN, THEN WE WOULD PULL THE DATA
01:58PM 14 BASICALLY FROM THIS OTHER PLATFORM CALLED ALCHEMIST TO PROCESS
01:59PM 15 ALL OF THE DATA, AT LEAST IN THE BEGINNING OF WORKING THERE.

01:59PM 16 Q. AND I WANT TO ASK A COUPLE OF FOLLOW-UP QUESTIONS.

01:59PM 17 A. UH-HUH.

01:59PM 18 Q. YOU MENTIONED A DEVICE CALLED TECAN; IS THAT RIGHT?

01:59PM 19 A. YES.

01:59PM 20 Q. AND IS THAT -- FIRST OF ALL, WAS THE TECAN THERANOS
01:59PM 21 MANUFACTURED OR INVENTED DEVICE?

01:59PM 22 A. NO.

01:59PM 23 Q. IT WAS A THIRD PARTY DEVICE?

01:59PM 24 A. YES.

01:59PM 25 Q. AND WHAT DID THE TECAN DO IN THE CONTEXT OF RUNNING A

01:59PM 1 SAMPLE ON THE EDISON?

01:59PM 2 A. SO THE TECAN WOULD BASICALLY TAKE A LITTLE BIT OF THE
01:59PM 3 BLOOD THAT WE HAD FROM THE COLLECTION UNIT, IT WOULD PUT IT IN
01:59PM 4 THE WELL, AND THEN IT WOULD DILUTE IT, AND THAT WAS SORT OF THE
01:59PM 5 SAMPLE PREP FOR THE EDISON CARTRIDGE.

01:59PM 6 Q. DID YOU HAVE AN UNDERSTANDING AS TO WHY THE SAMPLE NEEDED
01:59PM 7 TO BE DILUTED BY THE TECAN BEFORE IT COULD BE RUN ON THE
01:59PM 8 EDISON?

01:59PM 9 MR. COOPERSMITH: OBJECTION. 702, YOUR HONOR.

01:59PM 10 THE COURT: DO YOU WANT TO LAY A FOUNDATION FOR HER
01:59PM 11 KNOWLEDGE OF THAT.

01:59PM 12 MR. BOSTIC: I THINK THE QUESTION I ASKED WAS A YES
02:00PM 13 OR NO QUESTION, BUT JUST TO CLARIFY.

02:00PM 14 Q. I'M ASKING BASED ON YOUR WORK AT THE COMPANY, DID YOU HAVE
02:00PM 15 AN UNDERSTANDING AS TO WHY THAT STEP WAS NECESSARY, THE
02:00PM 16 DILUTION STEP --

02:00PM 17 A. YES.

02:00PM 18 Q. -- BEFORE A SAMPLE COULD BE RUN?

02:00PM 19 A. YES.

02:00PM 20 Q. AND HOW DID YOU GAIN THAT UNDERSTANDING?

02:00PM 21 A. FROM THE SOP'S THAT WERE PROVIDED TO US FROM THERANOS.

02:00PM 22 Q. SO THE COMPANY DOCUMENTS THAT GOVERNED THIS PROCESS
02:00PM 23 EXPLAINED THAT REASON?

02:00PM 24 A. YES.

02:00PM 25 Q. SO WHAT WAS THAT REASON? WHY WAS THAT DILUTION STEP

02:00PM 1 NECESSARY BEFORE THE SAMPLE COULD BE RUN ON THE EDISON?

02:00PM 2 MR. COOPERSMITH: SAME OBJECTION, YOUR HONOR. BEST

02:00PM 3 EVIDENCE AS WELL.

02:00PM 4 THE COURT: OVERRULED. YOU CAN ANSWER THE QUESTION.

02:00PM 5 THE WITNESS: SO PART OF IT WAS BECAUSE WE HAD SMALL

02:00PM 6 SAMPLE SIZES, SO WE DID A DILUTION STEP IN ORDER TO ACCOMMODATE

02:00PM 7 FOR THE SMALL SAMPLE SIZES, AND THEN IT'S ALSO A PART OF THE

02:00PM 8 TEST.

02:00PM 9 BY MR. BOSTIC:

02:00PM 10 Q. DID THE DILUTION STEP EFFECTIVELY INCREASE THE VOLUME OF

02:00PM 11 THE SAMPLE, MAKE IT BIGGER?

02:01PM 12 A. IT DID.

02:01PM 13 Q. THE PROCESS THAT YOU JUST OUTLINED, THOSE STEPS, WOULD

02:01PM 14 THAT PROCESS BE USED TO YIELD RESULTS FOR MULTIPLE ASSAYS AT A

02:01PM 15 TIME OR WOULD IT NEED TO BE RUN EACH TIME FOR EACH ASSAY THAT

02:01PM 16 NEEDED TO BE PERFORMED?

02:01PM 17 A. IT WOULD NEED TO BE RUN FOR EACH TEST THAT WE DID EACH

02:01PM 18 TEST OR ASSAY.

02:01PM 19 SO ONLY ONE PATIENT FOR ONE TEST WOULD GO THROUGH THAT

02:01PM 20 WHOLE PROCESS.

02:01PM 21 Q. SO IF A PATIENT CAME IN, FOR EXAMPLE, AND NEEDED, LET'S

02:01PM 22 SAY, JUST THREE ASSAYS RUN ON A SINGLE SAMPLE, HOW WOULD THAT

02:01PM 23 BE HANDLED?

02:01PM 24 A. SO IF IT WAS THREE ELISA TESTS OR THREE IMMUNOASSAYS, WE

02:01PM 25 WOULD HAVE TO GO THROUGH THAT WHOLE PROCESS THREE TIMES.

02:01PM 1 Q. AND DOES THAT MEAN THAT THE SAMPLE WOULD NEED TO BE
02:02PM 2 SUBDIVIDED AT LEAST THREE TIMES?

02:02PM 3 A. YES.

02:02PM 4 Q. AND I THINK YOU ANSWERED THIS AS WELL, BUT COULD SAMPLES
02:02PM 5 FROM MULTIPLE PATIENTS BE RUN THROUGH THE EDISON
02:02PM 6 SIMULTANEOUSLY?

02:02PM 7 A. NO.

02:02PM 8 Q. YOU MENTIONED THE EDISON 3.0 AND THE 3.5.

02:02PM 9 DID YOU ALSO HEAR ABOUT DEVICES CALLED THE 4.0 OR MINILAB
02:02PM 10 OR OTHER DEVICES WHILE YOU WERE AT THERANOS?

02:02PM 11 A. YES.

02:02PM 12 Q. AND WHAT WERE THE OTHER DEVICES THAT YOU RECALL?

02:02PM 13 A. SO THE 4.0 WERE THE NEXT ITERATION OF THE EDISON DEVICE.
02:02PM 14 SO INSTEAD OF JUST DOING ELISA'S, THEY WOULD BE ABLE TO DO
02:02PM 15 NUMEROUS TYPES OF CHEMISTRIES ON THERE.

02:02PM 16 SO THEY WOULD BE ABLE TO DO ELISA, THERE WAS GENERAL
02:02PM 17 CHEMISTRY, THERE WERE OTHER DEPARTMENTS AT THERANOS THAT RAN
02:02PM 18 OTHER TYPES OF TESTS, AND IT WAS SEEN AS THE NEXT GENERATION OF
02:02PM 19 THE EDISON DEVICES.

02:02PM 20 Q. YOU SAID EARLIER THAT ELISA WAS ANOTHER TERM FOR
02:02PM 21 IMMUNOASSAY; IS THAT CORRECT?

02:03PM 22 A. THAT'S CORRECT.

02:03PM 23 Q. AND THE 4.0 COULD DO OTHER TYPES OF TESTS BESIDES THE
02:03PM 24 IMMUNOASSAY?

02:03PM 25 A. YES.

02:03PM 1 Q. DURING YOUR TIME AT THERANOS, WAS THE COMPANY USING THE
02:03PM 2 3.0 OR THE 3.5 FOR ACTUAL PATIENT TESTING?

02:03PM 3 A. YES.

02:03PM 4 Q. ONE OR BOTH OF THOSE?

02:03PM 5 A. MOSTLY THE 3.5'S.

02:03PM 6 Q. AND HOW ABOUT THE 4.0 DEVICE THAT YOU JUST MENTIONED,
02:03PM 7 DURING YOUR TIME AT THE COMPANY DID THERANOS EVER USE THE 4.0
02:03PM 8 DEVICE FOR ACTUAL PATIENT TESTING?

02:03PM 9 A. NO.

02:03PM 10 Q. DID YOU HAVE AN UNDERSTANDING WHEN YOU WERE AT THE COMPANY
02:03PM 11 AS TO WHY THERANOS WAS NOT USING THE 4.0 DEVICE FOR PATIENT
02:03PM 12 TESTING?

02:03PM 13 A. THE 4.0'S DIDN'T HAVE THE CAPACITY TO RUN ANY TEST THAT WE
02:03PM 14 OFFERED THAT WERE LIVE, AND THEY JUST WEREN'T READY. THEY
02:03PM 15 HADN'T BEEN DEVELOPED YET.

02:03PM 16 MR. COOPERSMITH: YOUR HONOR, MOVE TO STRIKE UNDER
02:03PM 17 702. IT WASN'T RESPONSIVE TO THE QUESTION, AND IT'S ALSO A
02:04PM 18 VIOLATION OF RULE 702.

02:04PM 19 THE COURT: OVERRULED. THE ANSWER IS -- THE
02:04PM 20 QUESTION WAS BASED ON HER UNDERSTANDING AS AN EMPLOYEE. SO THE
02:04PM 21 OBJECTION IS OVERRULED. THE ANSWER CAN REMAIN.

02:04PM 22 BY MR. BOSTIC:

02:04PM 23 Q. AND, MS. CHEUNG, JUST TO CLARIFY, DURING YOUR TIME AT THE
02:04PM 24 COMPANY, WERE YOU GENERALLY AWARE OF WHAT ASSAYS WERE MOVING
02:04PM 25 THROUGH RESEARCH AND DEVELOPMENT AND WHICH WERE ACTUALLY IN

02:04PM 1 PATIENT TESTING USE?

02:04PM 2 A. YES.

02:04PM 3 Q. AND DURING YOUR TIME AT THE COMPANY, DID ANY TEST AT ALL

02:04PM 4 ON THE 4.0 DEVICE MOVE THROUGH THE R&D PROCESS AND ACTUALLY GET

02:04PM 5 TO THE PATIENT TESTING STAGE?

02:04PM 6 A. NO.

02:04PM 7 Q. THE PATIENT TESTS THAT THERANOS WAS RUNNING IN THE

02:05PM 8 CLINICAL LAB, WERE ALL OF THOSE TESTS RUN ON THE EDISON, THE

02:05PM 9 THERANOS-BUILT ANALYZERS?

02:05PM 10 A. CAN YOU REPEAT THE QUESTION?

02:05PM 11 Q. SURE.

02:05PM 12 THE PATIENT TESTING THAT THERANOS WAS DOING, WAS THAT ALL

02:05PM 13 BEING DONE ON THE EDISON, THE THERANOS-BUILT DEVICE?

02:05PM 14 A. NO. ONLY A SMALL SUBSET OF THE THERANOS TESTS WERE BEING

02:05PM 15 RUN ON THE EDISON DEVICES.

02:05PM 16 Q. AND WHY WAS THAT? WHY WAS ONLY A SMALL SUBSET BEING RUN

02:05PM 17 ON THE THERANOS DEVICES?

02:05PM 18 MR. COOPERSMITH: OBJECTION, YOUR HONOR. 602.

02:05PM 19 THE COURT: WELL, THIS GOES TO HER KNOWLEDGE AS AN

02:05PM 20 EMPLOYEE THERE?

02:05PM 21 MR. BOSTIC: CORRECT, YOUR HONOR.

02:05PM 22 THE COURT: IF YOU CAN ANSWER IN THE SCOPE OF YOUR

02:05PM 23 EMPLOYMENT.

02:05PM 24 THE WITNESS: SO IN THE SCOPE? OKAY.

02:05PM 25 THE EDISON DEVICES ONLY HAD THE CAPACITY TO RUN ELISA

02:05PM 1 TEST, WHICH IS ONLY -- IS ONE SPECIFIC TYPE OF CHEMISTRY. IT
02:05PM 2 DIDN'T HAVE THE CAPABILITIES TO RUN GENERAL CHEMISTRY,
02:06PM 3 MICROBIOLOGY, CYTOMETRY TESTS.

02:06PM 4 SO THE REASON WHY THERANOS ONLY RAN THAT SMALL SUBSET IS
02:06PM 5 BECAUSE THAT'S ALL THEY HAD THE CAPACITY TO RUN WAS BASICALLY
02:06PM 6 ELISA TYPE TESTS.

02:06PM 7 MR. COOPERSMITH: YOUR HONOR, I'M GOING TO OBJECT
02:06PM 8 AGAIN UNDER 702. THIS WITNESS DOESN'T HAVE THAT KNOWLEDGE TO
02:06PM 9 OPINE ABOUT WHAT THE DEVICE WAS CAPABLE OF OR WHAT ITS CAPACITY
02:06PM 10 WAS.

02:06PM 11 MR. BOSTIC: YOUR HONOR, SHE OPERATED THESE DEVICES
02:06PM 12 ON A DAILY BASIS. I THINK --

02:06PM 13 THE COURT: THE OBJECTION 702 IS OVERRULED.

02:06PM 14 MR. COOPERSMITH: YOUR HONOR, SHE CAN CERTAINLY SAY
02:06PM 15 WHAT SHE DID BUT TO GO FURTHER AND OPINE AS TO WHAT THE DEVICE
02:06PM 16 WAS CAPABLE OF AND WHAT ITS CAPACITY WAS I THINK IS BEYOND THIS
02:06PM 17 WITNESS'S EXPERTISE.

02:06PM 18 THE COURT: WELL, THE ANSWER, AS I UNDERSTAND IT --
02:06PM 19 AND, MR. BOSTIC, YOU COULD LAY A FOUNDATION IF YOU WOULD LIKE
02:06PM 20 TO -- IS BASED ON HER TRAINING AND EXPERIENCE AT THE COMPANY.

02:06PM 21 PERHAPS IF YOU WANT TO ASK HER IF THAT'S WHAT SHE WAS
02:06PM 22 INSTRUCTED OR TRAINED.

02:06PM 23 BY MR. BOSTIC:

02:06PM 24 Q. MS. CHEUNG, FROM YOUR TRAINING AND EXPERIENCE AT THE
02:07PM 25 COMPANY, DID YOU HAVE AN UNDERSTANDING AS TO WHAT THE EDISON 3

02:07PM 1 SERIES COULD DO AND WHAT IT COULD NOT DO?

02:07PM 2 A. YES.

02:07PM 3 Q. AND BASED ON YOUR TRAINING AND EXPERIENCE AT THE COMPANY,

02:07PM 4 WHERE WAS THAT LINE? WHAT COULD THE EDISON 3 SERIES DO AND

02:07PM 5 WHAT COULD IT NOT DO?

02:07PM 6 MR. COOPERSMITH: YOUR HONOR, SAME OBJECTION. 702.

02:07PM 7 THE COURT: OVERRULED.

02:07PM 8 THE WITNESS: CAN YOU REPEAT THE QUESTION?

02:07PM 9 MR. BOSTIC: SURE.

02:07PM 10 Q. WHAT COULD THE EDISON 3 SERIES DO AND WHAT COULD IT NOT DO

02:07PM 11 BASED ON YOUR TRAINING AND EXPERIENCE?

02:07PM 12 MR. COOPERSMITH: SAME OBJECTION, YOUR HONOR.

02:07PM 13 THE COURT: OVERRULED.

02:07PM 14 THE WITNESS: THE EDISON 3.0 SERIES COULD DO ELISA'S

02:07PM 15 AND THAT WAS THE ONLY CAPACITY IT COULD DO WAS THAT TYPE OF

02:07PM 16 CHEMISTRY AND METHODOLOGY, AND THAT WAS WHAT MY UNDERSTANDING

02:07PM 17 OF THE TECHNOLOGY BASED ON WORKING FOR THE COMPANY.

02:08PM 18 BY MR. BOSTIC:

02:08PM 19 Q. COULD I ASK YOU TO TURN TO EXHIBIT 3741 IN THE BINDER IN

02:08PM 20 FRONT OF YOU.

02:08PM 21 DO YOU SEE EXHIBIT 3741?

02:08PM 22 A. YES.

02:08PM 23 Q. AND WHAT IS THAT DOCUMENT IF YOU RECOGNIZE IT?

02:08PM 24 A. THIS IS THE TESTING MENU AT THERANOS.

02:08PM 25 Q. HAD YOU PREVIOUSLY HAD THE OPPORTUNITY TO REVIEW THE FIRST

02:08PM 1 FEW PAGES AT LEAST OF THIS EXHIBIT?

02:08PM 2 A. YES.

02:08PM 3 Q. AND LET'S FOCUS ON PAGES 1 THROUGH 7. AND I'LL ASK DO
02:08PM 4 PAGES 1 THROUGH 7 CONSTITUTE A FAIR APPROXIMATION OR A
02:08PM 5 REPRESENTATIVE EXAMPLE OF THE TEST MENU AT THERANOS?

02:08PM 6 A. YES.

02:09PM 7 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS THE
02:09PM 8 FIRST SEVEN PAGES OF 3741, AND WE'LL MARK IT AS 3741A.

02:09PM 9 MR. COOPERSMITH: ONE MOMENT, YOUR HONOR.

02:09PM 10 YOUR HONOR, NO OBJECTION TO THE FIRST SEVEN PAGES OF THIS
02:09PM 11 EXHIBIT.

02:09PM 12 THE COURT: IT'S ADMITTED, THE FIRST SEVEN PAGES
02:09PM 13 THAT IS MARKED AS 3741A, AND THAT MAY BE PUBLISHED.

02:09PM 14 (GOVERNMENT'S EXHIBIT 3741A WAS RECEIVED IN EVIDENCE.)

02:09PM 15 MR. BOSTIC: THANK YOU, YOUR HONOR.

02:09PM 16 AND, MS. WACHS, IF WE CAN GO TO PAGE 6, PLEASE, AND ZOOM
02:09PM 17 IN ON THE BOTTOM TWO-THIRDS.

02:09PM 18 Q. MS. CHEUNG, ARE WE LOOKING AT A PORTION OF TEST MENUS
02:09PM 19 SHOWING SOME TESTS THAT THERANOS OFFERED DURING YOUR TIME AT
02:09PM 20 THE COMPANY?

02:09PM 21 A. YES.

02:09PM 22 Q. AND I'LL ASK YOU TO TAKE A LOOK AT THESE AND IF YOU COULD,
02:10PM 23 TO THE EXTENT THAT YOU RECALL, IDENTIFY SOME EXAMPLES OF TESTS
02:10PM 24 THAT THE EDISON COULD DO AND SOME EXAMPLES OF TESTS THAT THE
02:10PM 25 EDISON COULD NOT DO.

02:10PM 1 SO LET'S START WITH THE TESTS THAT THE EDISON COULD DO.

02:10PM 2 A. SO THE EDISON COULD DO ON THIS ORDER PANEL ONE, TWO --

02:10PM 3 Q. AND JUST TO CLARIFY, I DON'T MEAN TO TEST YOUR MEMORY, BUT
02:10PM 4 IF YOU COULD JUST IDENTIFY SOME EXAMPLES.

02:10PM 5 A. SO IN THE THYROID SECTION THERANOS COULD DO T4, TOTAL T3,
02:10PM 6 AND THAT WAS IT.

02:10PM 7 AND THEN THIS IS FOR THE EDISON DEVICES.

02:11PM 8 AND IT COULD DO ONE OTHER, SO HCG IN THE REPRODUCTIVE
02:11PM 9 HEALTH.

02:11PM 10 AND AT THE TIME THAT I WORKED THERE ALSO TOTAL PSA, WHICH
02:11PM 11 IS IN THE ALPHABETICAL TEST I THROUGH Z AND VITAMIN D. SO
02:11PM 12 ABOUT FIVE TESTS.

02:11PM 13 VITAMIN D, WHICH IS ALSO IN THE ALPHABETICAL TEST.

02:11PM 14 Q. SO YOU'VE IDENTIFIED APPROXIMATELY FIVE TESTS ON THIS
02:11PM 15 PANEL THAT YOU CAN SEE?

02:11PM 16 A. YEAH. IT WAS MORE LIKE FOUR WHEN I WAS THERE.

02:11PM 17 Q. FAIR TO SAY, THEN, THAT THE VAST MAJORITY OF THE TESTS ON
02:11PM 18 DISPLAY COULD NOT BE DONE ON THE EDISON BASED ON YOUR
02:11PM 19 UNDERSTANDING?

02:11PM 20 MR. COOPERSMITH: OBJECTION, YOUR HONOR. LEADING.

02:11PM 21 THE COURT: OVERRULED. YOU CAN ANSWER THE QUESTION.

02:11PM 22 THE WITNESS: THAT IS CORRECT.

02:11PM 23 BY MR. BOSTIC:

02:11PM 24 Q. LET ME ASK YOU ABOUT A COUPLE OF THOSE. FOR EXAMPLE, DO
02:11PM 25 YOU SEE A HEADING IN THE UPPER LEFT OF THE SCREEN LABELLED

02:11PM 1 COMMON PANELS?

02:12PM 2 A. YES.

02:12PM 3 Q. AND UNDER COMMON PANELS THERE'S ONE LABELLED CBC, NO DIFF.

02:12PM 4 AND THEN ANOTHER LABELLED CBC WITH/AUTO DIFF.

02:12PM 5 DO YOU HAVE AN UNDERSTANDING DURING YOUR TIME AT THE

02:12PM 6 COMPANY WHAT THE CBC TEST WAS?

02:12PM 7 A. CBC STANDS FOR COMPLETE BLOOD COUNT, AND IT WAS A PANEL

02:12PM 8 TEST. SO UNDERNEATH CBC YOU COULD RUN AND CHECK FOR WHOLE

02:12PM 9 BLOOD CELLS, WHITE BLOOD CELLS, AND IT HAD SEVERAL DIFFERENT

02:12PM 10 MARKERS THAT IT WOULD LOOK FOR.

02:12PM 11 Q. AND I SEE THAT IT'S LISTED UNDER COMMON PANELS, BUT BASED

02:12PM 12 ON YOUR EXPERIENCE AT THE COMPANY, HOW COMMON WAS THAT CBC

02:12PM 13 ASSAY?

02:12PM 14 A. HOW COMMON WAS THAT?

02:12PM 15 Q. UH-HUH.

02:12PM 16 A. IT WAS ORDERED QUITE FREQUENTLY.

02:12PM 17 Q. AND COULD THE THERANOS EDISON DEVICE RUN A CBC PANEL OR

02:12PM 18 ANY PART OF IT?

02:12PM 19 A. NO.

02:12PM 20 Q. AND WAS THAT TRUE DURING YOUR ENTIRE TIME AT THE COMPANY?

02:13PM 21 A. YES.

02:13PM 22 Q. HOW ABOUT CMP. DO YOU SEE THAT LISTED UNDER COMMON

02:13PM 23 PANELS?

02:13PM 24 A. YES.

02:13PM 25 Q. AND DID YOU HAVE AN UNDERSTANDING FROM YOUR TIME AT THE

02:13PM 1 COMPANY AS TO WHAT CMP REFERRED TO?

02:13PM 2 A. YEAH. IT WAS COMPREHENSIVE METABOLIC PANEL.

02:13PM 3 Q. AND HOW COMMON OR HOW FREQUENTLY ORDERED WAS THAT TEST

02:13PM 4 WHEN YOU WERE AT THERANOS?

02:13PM 5 A. IT WAS FAIRLY COMMONLY ORDERED.

02:13PM 6 Q. AND COULD THE EDISON DEVICE RUN A CMP PANEL?

02:13PM 7 A. NO.

02:13PM 8 Q. SO IF THE EDISON COULDN'T DO MANY OF THESE TESTS, WHAT WAS

02:13PM 9 THERANOS USING TO RUN THESE ASSAYS WHEN THE ORDERS CAME IN?

02:13PM 10 A. THERANOS WAS USING A COUPLE DIFFERENT METHODS. SO FOR CBC

02:14PM 11 AND FOR THE COMPREHENSIVE METABOLIC PANEL THEY WERE USING FDA

02:14PM 12 APPROVED MACHINES THAT HAD BEEN MODIFIED IN ORDER TO BE ABLE TO

02:14PM 13 ACCOMMODATE THE SMALL SAMPLE SIZE THAT WE USED AT THERANOS.

02:14PM 14 Q. AND YOU MENTIONED THAT THERE WERE MODIFICATIONS TO THOSE

02:14PM 15 DEVICES.

02:14PM 16 WHO PERFORMED THOSE MODIFICATIONS, IF YOU KNOW?

02:14PM 17 A. THERANOS PROVIDED THOSE MODIFICATIONS.

02:14PM 18 Q. I'LL ASK YOU TO TURN TO TAB 5389 IN THE BINDER, PLEASE.

02:14PM 19 YOU CAN SEE A PICTURE ONCE YOU GET THERE?

02:14PM 20 A. YES.

02:14PM 21 Q. AND DO YOU RECOGNIZE THE OBJECT DEPICTED IN 5389?

02:14PM 22 A. YES.

02:14PM 23 Q. AND WHAT IS IT?

02:14PM 24 A. THIS IS A SIEMENS ADVIA.

02:14PM 25 Q. AND IS THIS A FAIR AND ACCURATE DEPICTION OF THE SIEMENS

02:14PM 1 ADVIA DEVICE?

02:14PM 2 A. YES.

02:14PM 3 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5389.

02:14PM 4 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

02:14PM 5 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

02:15PM 6 (GOVERNMENT'S EXHIBIT 5389 WAS RECEIVED IN EVIDENCE.)

02:15PM 7 BY MR. BOSTIC:

02:15PM 8 Q. MS. CHEUNG, A FEW MOMENTS AGO WE LOOKED AT THE PICTURE OF
02:15PM 9 THE THERANOS EDISON DEVICE. NOW WE'RE LOOKING AT A SIEMENS
02:15PM 10 ADVIA; IS THAT CORRECT?

02:15PM 11 A. YES.

02:15PM 12 Q. AND AS YOU DID BEFORE, COULD YOU DESCRIBE WHAT IT LOOKED
02:15PM 13 LIKE IN PERSON AND HOW BIG IT WAS?

02:15PM 14 A. SO THIS DEVICE WAS REALLY LARGE. YOU COULD THINK OF IT
02:15PM 15 ALMOST LIKE A -- WHAT WOULD BE A COMPARABLE? LIKE A FREEZER.
02:15PM 16 SO ONE OF THOSE BIG FREEZERS THAT YOU FILL WITH A BUNCH OF
02:15PM 17 FOOD. IT'S ABOUT THAT SIZE. AND YOU CAN STAND ABOUT TWO TO
02:15PM 18 THREE PEOPLE IN FRONT OF IT.

02:15PM 19 Q. AND IF YOU HAD TO ESTIMATE HOW WIDE IT WAS ACROSS FROM
02:15PM 20 LEFT TO RIGHT?

02:15PM 21 A. I DON'T KNOW IF I COULD DO THAT ESTIMATION. MAYBE ABOUT
02:15PM 22 FIVE FEET.

02:15PM 23 Q. AND DURING YOUR TIME AT THERANOS, DID YOU BECOME FAMILIAR
02:15PM 24 WITH THIS DEVICE, THE SIEMENS ADVIA?

02:15PM 25 A. YES.

02:15PM 1 Q. AND HOW DID YOU BECOME FAMILIAR WITH IT AT THERANOS?

02:15PM 2 A. I BECAME FAMILIAR WITH THE SIEMENS ADVIA BOTH WITH RUNNING
02:16PM 3 THEM USING THE THERANOS METHODS AND ALSO USING THEM IN THE
02:16PM 4 OTHER LAB, THE NORMAL FDA APPROVED METHODS AS WELL.

02:16PM 5 Q. SO JUST SO WE'RE CLEAR, WE'RE TALKING ABOUT A COUPLE OF
02:16PM 6 DIFFERENT APPROACHES THAT THERANOS TOOK TO RUNNING PATIENT
02:16PM 7 SAMPLES; IS THAT RIGHT?

02:16PM 8 A. THAT IS CORRECT.

02:16PM 9 Q. ONE METHOD WE TALKED ABOUT WAS RUNNING SMALL SAMPLES ON
02:16PM 10 THE THERANOS BUILT EDISON DEVICE; CORRECT?

02:16PM 11 A. CORRECT.

02:16PM 12 Q. AND WE'VE ALSO TALKED ABOUT RUNNING SAMPLES ON A MODIFIED
02:16PM 13 SIEMENS ADVIA OR OTHER THIRD PARTY DEVICE; IS THAT CORRECT?

02:16PM 14 A. THAT IS CORRECT.

02:16PM 15 Q. AND BETWEEN THOSE TWO METHODS, SO THE THERANOS MADE DEVICE
02:16PM 16 OR THE THERANOS MODIFIED DEVICE, COULD THERANOS RUN ALL OF THE
02:16PM 17 TESTS ON ITS TEST MENU?

02:16PM 18 A. NO.

02:16PM 19 Q. SO IT NEEDED AN ADDITIONAL APPROACH TO COVER ADDITIONAL
02:16PM 20 TESTS?

02:16PM 21 A. THAT IS CORRECT.

02:16PM 22 Q. AND WHAT WAS THE ADDITIONAL APPROACH?

02:17PM 23 A. SO THE ADDITIONAL APPROACH -- AT THERANOS WE HAD THE
02:17PM 24 FINGERSTICK COLLECTIONS, SO ESSENTIALLY COLLECTING BLOOD FROM
02:17PM 25 THE FINGERSTICK SAMPLE.

02:17PM 1 AND THEN IF WE WERE NOT ABLE TO PROCESS THE PATIENT
02:17PM 2 SAMPLES USING THE FINGERSTICK METHOD, SOMETIMES IT WOULD ALSO
02:17PM 3 COLLECT A VENOUS DRAW, SO FROM THE VEIN, AND THEY WOULD RUN A
02:17PM 4 CERTAIN SUBSET ON THE VENOUS DRAW USING BASICALLY UNMODIFIED
02:17PM 5 FDA APPROVED MACHINES THAT YOU COULD BUY.

02:17PM 6 AND THEN ADDITIONALLY, IF WE DIDN'T HAVE THE CAPACITY TO
02:17PM 7 RUN THOSE, WE WOULD ALSO CONTACT ANOTHER AGENCY CALLED ARUP,
02:17PM 8 AND WE WOULD RUN THOSE SAMPLES OUT, A-R-U-P, TO BE ABLE TO RUN
02:17PM 9 THOSE TYPES OF TESTS THAT WE DIDN'T HAVE CAPACITY TO DO
02:17PM 10 INHOUSE.

02:17PM 11 Q. SO, IN OTHER WORDS, ARE YOU SAYING THAT THERE WERE SOME
02:17PM 12 TESTS, SOME KINDS OF ASSAYS THAT THERANOS COULDN'T DO INHOUSE
02:17PM 13 WITH ANY OF THE THREE APPROACHES THAT WE'VE BEEN TALKING ABOUT?

02:18PM 14 A. THAT IS CORRECT.

02:18PM 15 Q. FOR THE MODIFIED AND UNMODIFIED THIRD PARTY NON-THERANOS
02:18PM 16 DEVICES, DID YOU HAVE EXPERIENCE OPERATING BOTH OF THOSE
02:18PM 17 METHODS DURING YOUR TIME AT THE COMPANY?

02:18PM 18 A. YES.

02:18PM 19 Q. AND YOU WALKED US THROUGH THE STEPS THAT WERE INVOLVED IN
02:18PM 20 PROCESSING A PATIENT SAMPLE THROUGH THE EDISON. CAN YOU DO IT
02:18PM 21 FOR THE OTHER TWO METHODS?

02:18PM 22 LET'S START WITH THE MODIFIED SIEMENS ADVIA, FOR EXAMPLE?
02:18PM 23 CAN YOU TELL US ROUGHLY WHAT THE STEPS WERE IN RUNNING A SAMPLE
02:18PM 24 THERE?

02:18PM 25 A. YEAH. SO FOR THE MODIFIED SIEMENS ADVIA, TYPICALLY IT

02:18PM 1 WOULD BE THE SAME THING, YOU WOULD GET THE NANOTAINERS, THE
02:18PM 2 LITTLE BLOOD CONTAINERS, AND WE WOULD PUT THEM THROUGH THE
02:18PM 3 SAMPLE AND IT WOULD TELL US WHO GETS IT FIRST. SO IS IT
02:18PM 4 GENERAL CHEMISTRY? IS IT ELISA? WHO GETS IT.

02:18PM 5 THEY TELL US HOW TO PREP THE BLOOD. DO WE CENTRIFUGE IT?
02:18PM 6 WHAT DO WE DO? DO WE COLLECT WHOLE BLOOD?

02:18PM 7 AND THEN ONCE WE GET THE TYPE OF, BASICALLY BLOOD TYPE
02:18PM 8 THAT WE GET, WE WOULD GO PRINT THE BAR CODES, AND WE WOULD --
02:19PM 9 IN THE CASE OF THE SIEMENS ADVIA MODIFIED, WE WOULD COLLECT ALL
02:19PM 10 OF THESE LITTLE THINGS CALLED T-CUPS WHICH WERE THERANOS
02:19PM 11 MANUFACTURED CUPS THAT WE WOULD PLACE IN THE SIEMENS ADVIA, AND
02:19PM 12 WE WOULD STACK THEM UP.

02:19PM 13 AND THEN THEY WOULD UTILIZE THE TECAN TO BASICALLY DOSE
02:19PM 14 OUT THE BLOOD INTO THESE T-CUPS AND THEN DILUTE THE SAMPLES.

02:19PM 15 AND THEN WE WOULD TAKE THAT TRAY, AND WE WOULD RUN IT OVER
02:19PM 16 TO THE SIEMENS ADVIA, MAKE SURE ALL OF THE BAR CODES WERE PUT
02:19PM 17 ON THEM, AND THEN WE WOULD LOAD UP THIS MACHINE.

02:19PM 18 AND THEN FROM THERE, MAKE SURE AND CHECK THAT IT RAN ALL
02:19PM 19 OF THE BAR CODES CORRECTLY AND START THE PROCESS SO IT COULD
02:19PM 20 PROCESS ALL OF THE DIFFERENT RESULTS.

02:19PM 21 AND THEN FROM THERE WE WOULD BE ABLE TO GENERATE WHAT THE
02:19PM 22 PATIENT RESULTS WERE.

02:19PM 23 SO THAT WAS THE THERANOS MODIFIED FOR THE SIEMENS ADVIA.

02:20PM 24 Q. YOU MENTIONED THE TECAN DEVICE AGAIN?

02:20PM 25 A. YES.

02:20PM 1 Q. WAS THAT ALSO NECESSARY TO USE THE THERANOS MODIFIED THIRD
02:20PM 2 PARTY DEVICES?

02:20PM 3 A. YES, IT WAS.

02:20PM 4 Q. AND I MAY HAVE FORGOT TO ASK YOU BEFORE, WHAT DOES THE
02:20PM 5 TECAN DEVICE LOOK LIKE AND HOW BIG WAS IT?

02:20PM 6 A. IT WAS REALLY BIG. SO THE TECAN DEVICE, IT'S ALMOST LIKE
02:20PM 7 A HARDWARE WORK BENCH. SO IT IS A LIQUID HANDLING ROBOT. IT
02:20PM 8 HAS THIS BIG TABLETOP TO IT WHERE YOU CAN SET UP DIFFERENT
02:20PM 9 STRUCTURES TO TELL THE ROBOTIC ARM WHERE IT SHOULD MOVE.

02:20PM 10 YOU COULD FIT MAYBE, AGAIN, LIKE THREE PEOPLE, FOUR PEOPLE
02:20PM 11 IN FRONT OF IT.

02:20PM 12 Q. AND THAT LARGE DEVICE AS WELL AS THE LARGE MODIFIED
02:20PM 13 SIEMENS ADVIA WOULD BE BOTH REQUIRED FOR RUNNING A SAMPLE UNDER
02:20PM 14 THIS METHOD?

02:20PM 15 A. YES.

02:20PM 16 Q. AND YOU ALSO TALKED ABOUT HOW SOME SAMPLES NEEDED TO BE
02:20PM 17 CENTRIFUGED; IS THAT CORRECT?

02:20PM 18 A. THAT IS CORRECT.

02:20PM 19 Q. AND WOULD THAT REQUIRE YET ANOTHER PIECE OF EQUIPMENT?

02:21PM 20 A. YES.

02:21PM 21 Q. HOW ABOUT THE THIRD METHOD WE TALKED ABOUT USING THE
02:21PM 22 EDISON, AND WE TALKED ABOUT USING THE THIRD PARTY DEVICES. HOW
02:21PM 23 ABOUT AN UNMODIFIED THIRD PARTY DEVICE? WHAT WAS THE PROCESS
02:21PM 24 LIKE FOR THAT AND HOW DID IT COMPARE?

02:21PM 25 A. YEAH. SO FOR THE SIEMENS ADVIA, IF YOU ARE REALLY GOING

02:21PM 1 TO RUN IT IN THE UNMODIFIED, I TYPICALLY HAVE A VENOUS DRAW FOR
02:21PM 2 THE TWO, IT WOULD HAVE A BAR CODE ON IT. I WOULD JUST TAKE THE
02:21PM 3 BLOOD SAMPLE OVER THE CAP, PUT IT IN THE MACHINE, AND CHECK
02:21PM 4 THAT IT'S RUNNING ALL THE RIGHT PATIENTS AND ALL OF THE RIGHT
02:21PM 5 TESTS, AND THEN I WOULD HIT START, AND THEN IT WOULD RUN ALL OF
02:21PM 6 THE TEST SAMPLES THAT I NEEDED TO RUN.

02:21PM 7 Q. WAS THAT FEWER STEPS THAN WERE REQUIRED FOR THE THERANOS
02:21PM 8 SPECIFIC METHOD?

02:21PM 9 A. IT WAS CONSIDERED WAY FEWER STEPS AND IT WAS WAY MORE
02:21PM 10 AUTOMATED. YOU BASICALLY JUST OPENED THE TWO, YOU MAKE SURE
02:21PM 11 THE RIGHT BAR CODE IS ON IT -- SORRY.

02:22PM 12 YOU OPEN THE TWO, YOU PUT IT IN THE MACHINE, AND YOU JUST
02:22PM 13 LET THE SIEMENS ADVIA BASICALLY SCAN ALL OF THE BAR CODES AND
02:22PM 14 RUN ALL OF THE TESTS, AND YOU DON'T TOUCH IT PAST THAT POINT.

02:22PM 15 Q. AND I ASKED YOU BEFORE ABOUT THE EDISON DEVICE AND WHETHER
02:22PM 16 IT COULD RUN MULTIPLE ASSAYS AT A TIME OR MULTIPLE SAMPLES AT A
02:22PM 17 TIME.

02:22PM 18 WAS THE ANSWER NO? IS THAT CORRECT?

02:22PM 19 A. YES.

02:22PM 20 Q. HOW ABOUT THE SIEMENS ADVIA? COULD IT RUN MULTIPLE ASSAYS
02:22PM 21 ON A SINGLE PATIENT SAMPLE?

02:22PM 22 A. YES.

02:22PM 23 Q. AND HOW ABOUT MULTIPLE PATIENT SAMPLES, COULD IT RUN
02:22PM 24 SEVERAL PATIENT SAMPLES AT THE SAME TIME?

02:22PM 25 A. YES.

02:22PM 1 Q. LET'S TALK A LITTLE BIT ABOUT YOUR WORK IN R&D.

02:23PM 2 ARE YOU FAMILIAR WITH THE TERM "VALIDATION" IN THE CONTEXT

02:23PM 3 OF BLOOD TESTING?

02:23PM 4 A. YES.

02:23PM 5 Q. AND WHAT DID THAT MEAN DURING YOUR TIME AT THERANOS?

02:23PM 6 A. SO VALIDATION AT THERANOS MEANT THAT WE HAD TO CREATE

02:23PM 7 ESSENTIALLY THESE VALIDATION REPORTS, AND WE HAD TO RUN A

02:23PM 8 SERIES OF DIFFERENT STUDIES TO CHECK AND SEE WAS THE TEST

02:23PM 9 SUFFICIENT ENOUGH AND OF QUALITY ENOUGH TO START RUNNING ON

02:23PM 10 PATIENT SAMPLES.

02:23PM 11 SO VALIDATION STUDIES WOULD INCLUDE THINGS LIKE PRECISION.

02:23PM 12 ARE THE TESTS PERFORMING IN A WAY THAT IT'S CONSISTENT OVER

02:23PM 13 TIME? ARE THEY ACCURATE? ARE WE BASICALLY BEING ABLE TO

02:23PM 14 GENERATE THE ACCURATE RESULT BASED ON A NO CONCENTRATION SAMPLE

02:23PM 15 THAT WE HAVE?

02:23PM 16 OR ALSO, BECAUSE THERANOS WAS PERFORMING A DIFFERENT TYPE

02:23PM 17 OF COLLECTION, WE WERE DOING FINGERSTICK, WE NEEDED TO CONDUCT

02:23PM 18 STUDIES TO COMPARE HOW DOES THE FINGERSTICK COMPARE TO THE

02:23PM 19 VENOUS DRAW.

02:23PM 20 SO IT WAS A WHOLE RANGE OF DIFFERENT EXPERIMENTS THAT WE

02:24PM 21 HAD TO CONDUCT IN ORDER TO GET THEM APPROVED TO MOVE ON TO THE

02:24PM 22 CLINICAL SETTING.

02:24PM 23 Q. WE TALKED BEFORE ABOUT RESEARCH AND DEVELOPMENT GENERALLY,

02:24PM 24 BUT FOR VALIDATION SPECIFICALLY, IS THAT SOMETHING THAT HAPPENS

02:24PM 25 BEFORE, DURING, OR AFTER A TEST IS USED ON ACTUAL PATIENTS?

02:24PM 1 A. TYPICALLY IT HAPPENS BEFORE.

02:24PM 2 Q. AND WHEN YOU JOINED THERANOS IN 2013, THE COMPANY WAS

02:24PM 3 ALREADY CONDUCTING PATIENT TESTING; IS THAT RIGHT?

02:24PM 4 A. THAT IS CORRECT.

02:24PM 5 Q. AND WAS THERE ONGOING VALIDATION WORK HAPPENING AT THE

02:24PM 6 COMPANY DURING YOUR TIME THERE OR WAS IT ALREADY COMPLETE?

02:24PM 7 A. THERE WAS ONGOING VALIDATION WORK DURING MY TIME THERE.

02:24PM 8 Q. AND WAS THAT TRUE FOR THROUGHOUT YOUR TIME AT THE COMPANY?

02:24PM 9 A. YES.

02:24PM 10 Q. AND WHEN YOU LEFT THE COMPANY IN APRIL OF 2014, WAS ALL OF

02:24PM 11 THE VALIDATION WORK COMPLETE OR WAS IT STILL ON GOING?

02:24PM 12 A. IT WAS STILL ONGOING.

02:24PM 13 Q. FOR THE VALIDATION WORK, WERE ACTUAL HUMAN SAMPLES

02:25PM 14 REQUIRED?

02:25PM 15 A. CAN YOU REPEAT THAT QUESTION.

02:25PM 16 Q. SURE. TO VALIDATE A TEST AT THERANOS, WERE HUMAN SAMPLES

02:25PM 17 REQUIRED?

02:25PM 18 A. YES.

02:25PM 19 Q. AND WHERE DID THOSE SAMPLES COME FROM FOR THE THERANOS

02:25PM 20 VALIDATION WORK?

02:25PM 21 A. SO SOMETIMES PEOPLE WOULD GIVE US SAMPLES OR WE WOULD BUY

02:25PM 22 THEM, AND ALSO THEY COLLECTED SAMPLES INHOUSE. SO WE, AS

02:25PM 23 EMPLOYEES OF THE COMPANY, COULD DONATE OUR BLOOD IN ORDER TO BE

02:25PM 24 PROCESSED AND USED FOR RESEARCH.

02:25PM 25 Q. AND DID YOU PERSONALLY DONATE BLOOD WHEN YOU WERE AN

02:25PM 1 EMPLOYEE AT THERANOS TO BE USED IN THE VALIDATION PROCESS?

02:25PM 2 A. YES.

02:25PM 3 Q. CAN YOU DESCRIBE MR. BALWANI'S INVOLVEMENT, IF ANY, IN THE
02:25PM 4 RESEARCH AND DEVELOPMENT WORK WHILE YOU WERE AT THERANOS?

02:25PM 5 A. YEAH. SO SUNNY'S INVOLVEMENT IN THE RESEARCH AND
02:25PM 6 DEVELOPMENT PROCESS, ESPECIALLY WHEN WE WOULD CONDUCT
02:26PM 7 VALIDATION, ESSENTIALLY SUNNY WOULD TELL US WHAT OUR PRIORITIES
02:26PM 8 WERE IN TERMS OF THE ASSAYS THAT WE NEEDED TO VALIDATE.

02:26PM 9 AND ONCE WE HAD CONDUCTED ALL OF THE VALIDATION STUDIES
02:26PM 10 AND WE REVIEWED THEM, WE WOULD GIVE THEM TO SHARADA, AND
02:26PM 11 SHARADA WOULD TALK TO SUNNY AND ELIZABETH ABOUT THE PROGRESS
02:26PM 12 THAT WE WERE MAKING ON THE VALIDATION.

02:26PM 13 EVERY ONCE IN A WHILE HE WOULD COME IN THE LABORATORY,
02:26PM 14 TOO, AND SEE WHAT WE WERE WORKING ON AND TO JUST CHECK IN
02:26PM 15 SOMETIMES TO SEE WHAT WAS HAPPENING IN THE R&D LAB.

02:26PM 16 Q. HOW FREQUENTLY DID YOU SEE MR. BALWANI IN THE OFFICE AT
02:26PM 17 THERANOS?

02:26PM 18 A. IN THE OFFICE OR IN THE LABORATORY?

02:26PM 19 Q. IN THE OFFICE GENERALLY?

02:26PM 20 A. HE WAS THERE QUITE FREQUENTLY.

02:26PM 21 Q. AND YOU SAID THAT HE WOULD OCCASIONALLY STOP BY THE R&D
02:26PM 22 LAB SPECIFICALLY?

02:26PM 23 A. YEAH. SO WE WOULD -- YOU COULD SEE HIM BECAUSE THEY HAVE
02:26PM 24 GLASS DOORS TO THE OFFICES, SO EVERY TIME YOU WALKED IN AND
02:26PM 25 ENTERED THE BUILDING YOU COULD TYPICALLY SEE THEM IN THE OFFICE

02:26PM 1 AND EVERY ONCE IN A WHILE HE WOULD COME DOWN TO THE LAB AS
02:26PM 2 WELL.

02:26PM 3 Q. MS. CHEUNG, DO YOU SEE MR. BALWANI IN THE COURTROOM TODAY?

02:27PM 4 A. YES.

02:27PM 5 Q. AND COULD YOU IDENTIFY HIM FOR US, PLEASE?

02:27PM 6 A. HE'S SITTING THERE WEARING THE BLUE MASK AND THE CHECKERED
02:27PM 7 TIE.

02:27PM 8 MR. BOSTIC: THE RECORD SHOULD SHOW THAT THE WITNESS
02:27PM 9 HAS IDENTIFIED THE DEFENDANT.

02:27PM 10 THE COURT: YES.

02:27PM 11 MR. BOSTIC: YOUR HONOR, I'M ABOUT TO MOVE INTO A
02:27PM 12 DIFFERENT SUBJECT. THIS MIGHT BE A GOOD STOPPING POINT FOR THE
02:27PM 13 DAY.

02:27PM 14 THE COURT: LET'S DO THAT THEN. WE'RE GOING TO TAKE
02:27PM 15 OUR BREAK FOR THE DAY. LET'S RESUME AT 9:00 O'CLOCK. IF YOU
02:27PM 16 COULD RESUME AT 9:00 O'CLOCK, PLEASE.

02:27PM 17 LADIES AND GENTLEMEN OF THE JURY, I JUST WANT TO READ YOU
02:27PM 18 AN ADMONISHMENT ONCE AGAIN, PLEASE.

02:27PM 19 AS I INDICATED BEFORE THIS TRIAL STARTED, YOU AS JURORS
02:27PM 20 WILL DECIDE THE CASE BASED SOLELY ON THE EVIDENCE THAT IS
02:27PM 21 PRESENTED IN THIS COURTROOM.

02:27PM 22 THIS MEANS THAT AFTER YOU LEAVE HERE FOR THE NIGHT, YOU
02:27PM 23 MUST NOT CONDUCT ANY INDEPENDENT RESEARCH ABOUT THIS CASE, THE
02:27PM 24 MATTERS IN THE CASE, THE LEGAL ISSUES IN THE CASE, OR THE
02:27PM 25 INDIVIDUALS OR OTHER ENTITIES INVOLVED IN THE CASE.

02:28PM 1 THIS IS IMPORTANT FOR THE SAME REASONS THAT JURORS HAVE
02:28PM 2 LONG BEEN INSTRUCTED TO LIMIT THEIR EXPOSURE TO TRADITIONAL
02:28PM 3 FORMS OF MEDIA INFORMATION SUCH AS TELEVISION AND NEWSPAPERS.

02:28PM 4 YOU MUST ALSO NOT COMMUNICATE WITH ANYONE IN ANY WAY ABOUT
02:28PM 5 THIS CASE, AND YOU MUST IGNORE ANY INFORMATION ABOUT THE CASE
02:28PM 6 THAT YOU MIGHT SEE WHILE BROWSING THE INTERNET OR YOUR SOCIAL
02:28PM 7 MEDIA FEEDS.

02:28PM 8 IN ESSENCE, LADIES AND GENTLEMEN, ONCE AGAIN, PLEASE, YOU
02:28PM 9 MUST NOT AND YOU MAY NOT DO ANY INDEPENDENT RESEARCH OR IN ANY
02:28PM 10 WAY TRY TO DISCOVER OR HAVE DISCUSSIONS ABOUT THIS CASE OR
02:28PM 11 ANYTHING TO DO WITH IT.

02:28PM 12 WE'LL RECESS THIS EVENING. IF YOU COULD COLLECT
02:28PM 13 YOURSELVES SUCH THAT WE CAN BEGIN AT 9:00 O'CLOCK TOMORROW, I'D
02:28PM 14 BE GRATEFUL. I THINK WE HAVE BREAKFAST AGAIN.

02:28PM 15 MS. ROBINSON, DO WE? GREAT. OKAY. THAT AWAITS YOU.

02:28PM 16 HAVE A GOOD EVENING, FOLKS. WE'LL SEE YOU TOMORROW.

02:29PM 17 THANK YOU. YOU CAN STAND DOWN. WE'LL SEE YOU TOMORROW
02:29PM 18 MORNING.

02:29PM 19 (JURY OUT AT 2:29 P.M.)

02:29PM 20 THE COURT: HAVE A SEAT. THE RECORD SHOULD REFLECT
02:29PM 21 THAT THE JURY HAS LEFT THE COURTROOM FOR THE EVENING.

02:29PM 22 MS. CHEUNG HAS LEFT THE COURTROOM.

02:30PM 23 ALL COUNSEL AND MR. BALWANI REMAIN.

02:30PM 24 ANYTHING FURTHER BEFORE WE RECESS FOR THE DAY, COUNSEL?

02:30PM 25 MR. BOSTIC: NOTHING FROM THE GOVERNMENT,

02:30PM 1 YOUR HONOR.

02:30PM 2 THE COURT: MR. COOPERSMITH.

02:30PM 3 MR. COOPERSMITH: NO, YOUR HONOR.

02:30PM 4 THE COURT: ALL RIGHT. JUST TO RECALL -- AND THANK
02:30PM 5 YOU FOR YOUR PATIENCE TODAY. WE GOT OUR FIRST DAY UNDERWAY.
02:30PM 6 THANK YOU FOR THAT.

02:30PM 7 PLEASE RECALL THAT THE COURT IS AVAILABLE AT 8:30. SHOULD
02:30PM 8 ANY PARTY WISH TO BRING ANYTHING UP FOR DISCUSSION OUTSIDE OF
02:30PM 9 THE PRESENCE OF THE JURY, I'M ALWAYS HERE TO DO THAT SHOULD
02:30PM 10 THAT BECOME NECESSARY AT ANY TIME.

02:30PM 11 WE'LL HAVE TOMORROW, AND THEN WE'LL HAVE A LONG BREAK
02:30PM 12 UNTIL NEXT WEEK.

02:30PM 13 I THINK I'VE INDICATED TO A VERY GENEROUS PERSON HAS
02:30PM 14 OFFERED THE SCHEDULE SUCH THAT WE CAN BE IN SESSION THE LAST
02:30PM 15 WEEK IN MAY, WHICH IS THAT MEMORIAL DAY WEEK. WE WILL HAVE
02:30PM 16 THOSE DAYS AVAILABLE TO US OWING TO THE GENEROSITY OF A CERTAIN
02:30PM 17 COURT EMPLOYEE. SO WE'RE VERY GRATEFUL FOR THAT PERSON, AND
02:30PM 18 WE'LL HAVE THAT AVAILABLE TO US.

02:31PM 19 I DON'T THINK I'VE MENTIONED THAT TO THE JURY. I'LL TELL
02:31PM 20 THEM THAT TOMORROW, TOMORROW MORNING.

02:31PM 21 ALL RIGHT. HAVE A GOOD EVENING. THANK YOU.

02:31PM 22 MR. BOSTIC: THANK YOU, YOUR HONOR.

02:31PM 23 MR. COOPERSMITH: THANK YOU.

02:31PM 24 (COURT ADJOURNED AT 2:31 P.M.)

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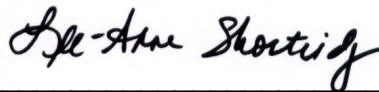
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: MARCH 22, 2022